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THE

NORTH AMERICAN REVIEW.

VOL. CXXII.

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NOTICE.

The Editors beg leave to state that they cannot return rejected communications, unless all expenses are prepaid; and to this rule they can make no exception.

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NORTH AMERICAN REVIEW.

No. CCLI.

APRIL, 1876.

ART. I. — DR. CUTLER AND THE ORDINANCE OF 1787.

On the 13th of July, 1787, the Congress of the old Confederation, sitting in New York, passed "an Ordinance for the Government of the Territory Northwest of the River Ohio," which has passed into history as the "Ordinance of 1787."

The Territory embraced what is now the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin. Its provisions have since been applied to all the Territories of the United States lying north of latitude 36° 40′, which now comprises the States of Iowa, Minnesota, Nebraska, and Oregon. August 7, 1789, the Constitution of the United States having then been adopted, Congress, among its earliest acts, passed one recognizing the binding force of the Ordinance of 1787, and adapting its provisions to the Federal Constitution.

The Ordinance, in the breadth of its conceptions, its details, and its results, has been perhaps the most notable instance of legislation that was ever enacted by the representatives of the American people. It fixed forever the character of the immigration, and of the social, political, and educational institutions of the people who were to inhabit this imperial territory, — then a wilderness, but now covered by five great States, and teeming with more than ten million persons, or one fourth of the entire population of the United States. It forever prohibited slavery and involuntary servitude, — that

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pestilent element of discord and tyranny in our American system, which then existed in all the States except Massachusetts, where it had come to an end, by a decision of its Supreme Court, only four years before. It declared that "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall always be encouraged." It prohibited the feudal law of primogeniture, and provided that the property of a parent dying intestate should be divided equally among his children or next of kin; that no person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments; that the inhabitants shall always be entitled to the benefits of the writ of *habeas corpus*, of trial by jury, of a proportional representation in the legislature, and of judicial proceedings according to the course of the common law; that all persons shall be bailable, unless for capital offences, when the proof shall be evident, or the presumption great; that all fines shall be moderate, and no cruel and unusual punishment shall be inflicted; that no man shall be deprived of his liberty or property but by the judgment of his peers, or the law of the land; and should the public exigencies make it necessary to take any man's property, or to demand his particular services, full compensation shall be made for the same; and in the just preservation of rights and property, it is understood and declared that no law ought ever to be made or have force in said territory that shall in any manner whatever interfere with or affect private contracts or engagements *bona fide* and without fraud previously made.

This was the first embodiment in written constitutional law of a provision maintaining the obligation of contracts. Six weeks later it was, on motion of Mr. King of Massachusetts, incorporated in the draft of the Constitution of the United States.

The Ordinance further provided, that "the navigable waters leading into the Mississippi and St. Lawrence, and the carrying-places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States."

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Such are some of the broad and enlightened provisions which have made the Ordinance of 1787 so beneficent and memorable. They entered not only into the organic laws of the territory, but were made perpetual and irrepealable. When new States were organized on this territory, the people were not left with the discretion of accepting or discarding the provisions of the Ordinance in their constitutions. Its vital principles, some of which have been enumerated, were embodied in six "articles of compact between the original States and the people and States of the said territory, and forever to remain unalterable unless by common consent." It was well understood that common consent to any material change could never be obtained. No other instance exists in American legislation of laws enacted under the form of "articles of compact," except in the ordinance relating to this same territory drawn by Mr. Jefferson in 1784, which will come under our notice in a later part of this discussion. If the slavery prohibition had not been an "article of compact," Indiana and Illinois, and possibly Ohio, would have been admitted into the Union as Slave States. As early as 1802 Gen. William Henry Harrison, then Governor of the Indiana Territory, and later President of the United States, called a convention of delegates to consider the means by which slavery could be introduced into the territory; and he himself presided over its deliberations. The convention voted to give its consent to the suspension of the sixth article of compact, and to memorialize Congress for its consent to the same. The memorial laid before Congress stated that the suspension of the sixth article would be highly "advantageous to the territory," and "would meet with the approbation of at least nine tenths of the good citizens of the same." The subject was referred to a committee, of which Mr. John Randolph of Virginia was chairman, who reported adversely as follows: "That the rapidly increasing population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known in that quarter of the

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United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants of the territory will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration." *

Ohio was admitted to the Union the same year, and in the formation of her Constitution the advocates of slavery made a bold and decided stand for its introduction, but were defeated. Several memorials were sent to Congress at a later date, from Indiana and Illinois, asking for the repeal of the antislavery prohibition, and several committees in Congress reported in favor of the repeal; but Congress firmly maintained the integrity of the compact of 1787.

The only persons dwelling in the territory at that time were about three thousand Louisiana and Canadian French settlers on its western and northern borders, a few families in the southern border, who claimed to be citizens of Virginia, and roving tribes of Indians. Although the Ordinance protected the personal and land rights of the French settlers, among whom a few slaves were held, they took no part in the political affairs of the territory, and gradually moved across the Mississippi and into Canada. The Ordinance had, therefore, no old rubbish to clear away, and no deep-seated customs and prejudices to contend against. It stamped itself upon the soil while it was yet a wilderness, and its impress can be seen today in the laws, the character, the social habits, and thrift of these great Northwestern States. Compare these States with Kentucky on the south and Missouri on the west, over which this Ordinance did not extend. Across the Ohio and Mississippi Rivers can be found an order of civilization and social customs that might suggest to a Northern traveller that he was in a foreign country. This disparity in industrial habits, general education, and business enterprise was even more marked before the late war than it is now.

* Am. State Papers, Pub. Lands, I. 160.

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Extend this comparison to the events which occurred from 1861 to 1865. Every square mile of territory that was covered by the Ordinance of 1787 was patriotic, and gave its men and its means for the support of the Union. South and southwest of that boundary-line were treachery and rebellion under the plausible semblance of neutrality. Kentucky and Missouri probably furnished more men who fought *against* the United States flag than fought *under* it. The Northwestern States put more than a million soldiers into the Union armies; and they were the men who fought at Forts Henry and Donelson, Pittsburg Landing, Stone River, Jackson, and Vicksburg, and achieved the only Union victories gained during the first two years of the war. If, instead of the principles of the Ordinance of 1787, the institutions of Kentucky and Missouri had been allowed to gain a foothold in these States, can any one doubt what would have been the result of the war and the fate of this Union?

If Mr. Webster were living to-day, would he not see new reasons for that splendid encomium which in 1830, in his speech in answer to Hayne, he pronounced on the Ordinance of 1787? "We are accustomed," he said, "to praise the lawgivers of antiquity; we help to perpetuate the fame of Solon and Lycurgus; but I doubt whether one single law of any lawgiver, ancient or modern, has produced effects of more distinct, marked, and lasting character than the Ordinance of 1787. We see its consequences at this moment, and we shall never cease to see them, perhaps, while the Ohio shall flow."

Judge Timothy Walker of Ohio, in an address delivered at Cincinnati in 1837, said: "Upon the surpassing excellence of this Ordinance no language of panegyric would be extravagant. It approaches as nearly to absolute perfection as anything to be found in the legislation of mankind; for after the experience of fifty years, it would perhaps be impossible to alter without marring it. In short, it is one of those matchless specimens of sagacious forecast which even the reckless spirit of innovation would not venture to assail. The emigrant knew beforehand that this was a land of the highest political as well as national promise, and under the auspices of another Moses, he journeyed with confidence towards his new Canaan."

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Mr. Chase, late Chief Justice of the United States, in the introduction to his "Statutes of Ohio," said: "Never, probably, in the history of the world, did a measure of legislation so accurately fulfil, and yet so mightily exceed, the anticipations of the legislators. The Ordinance has well been described as having been a pillar of cloud by day and of fire by night in the settlement and government of the Northwestern States."

It may seem strange that, after the lapse of nearly a century, the origin and history of so important a document should still be matters of doubt, and hence of discussion. The statement is ventured with some confidence that in the whole range of topics in our national history there is none which has been more obscure, or the subject of more conflicting and erroneous statements than the one just named. No one of the general histories of the United States or of the special histories of the Western States gives any information on the subject. Mr. G. T. Curtis in his elaborate "History of the Constitution of the United States," knowing it to be the source of some of the provisions of the Constitution, has omitted to give any historical account of the Ordinance.*

Mr. Webster, in the speech which has been quoted, ascribed the authorship of the Ordinance solely to Nathan Dane of Massachusetts, and this has been the commonly received opinion on the subject since that time. Mr. Benton of Missouri, and Mr. Hayne, promptly challenged the accuracy of the statement upon the spot. "Before I proceed," said Mr. Benton, "to the main object of this reply, I must be permitted to clear away some ornamental work, and to remove some rubbish which the Senator from Massachusetts [Mr. Webster] has

* In his second volume, p 344, is a note referring the reader, for an account of the Ordinance, to the appendix; but nothing on the subject appears in the appendix. His publishers subsequently issued a printed slip, containing a note from Mr. Curtis, dated March 20, 1858, which will be found inserted in some copies, stating the reason why this matter was omitted. After the foot-note on p. 344 had been printed, the author's attention was called to a letter written by Mr. Dane to Rufus King, which he regarded as settling the question of authorship, and hence he had cancelled the matter he had prepared. A brief extract from this letter is given, but without an intimation as to where the entire letter can be found. Mr. Dane's letter was printed by Charles King, the son of Rufus King, in the "New York Daily Tribune" of February 28, 1855, page 6. It is an important letter, and will be quoted and considered in the progress of this discussion.

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placed in the way, either to decorate his own march or to embarrass mine. He has brought before us a certain Nathan Dane, of Beverly, Massachusetts, and loaded him with such an exuberance of blushing honors as no modern name has been known to merit or to claim. So much glory was caused by a single act, and that act the supposed authorship of the Ordinance of 1787, and especially the clause in it which prohibits slavery and involuntary servitude. So much encomium and such grateful consequences it seems a pity to spoil, but spoilt it must be; for Mr. Dane was no more the author of that Ordinance, sir, than you or I, who about that time were mewling and puking in our nurses' arms. That Ordinance, and especially the non-slavery clause, was not the work of Nathan Dane of Massachusetts, but of Thomas Jefferson of Virginia."

Later in the same debate Mr. Benton said: "I have already given the proof of the fact that the South is entitled to the honor of originating the clause against slavery in the Northwestern Territory. The state of the votes also upon the adoption shows that she is entitled to the honor of passing it."

Mr. Hayne commented on the subject in a similar strain. Mr. Charles King of New York, President of Columbia College, in 1855, published a paper on the Northwestern Territory, in which he claimed for his father, Rufus King, the credit of being the author of the antislavery clause in the Ordinance. Mr. Rufus King did, two years before the Ordinance was passed, propose such a clause as a supplementary provision to another ordinance; but, as we shall presently see, nothing ever came of it. He moved its committal, and never called it up for consideration. Mr. King was not a member of the Congress which passed the Ordinance of 1787, but was a member of the Convention for the formation of the Constitution in session at the same time at Philadelphia.

Hon. Edward Coles, Governor of Illinois from 1822 to 1826, read a paper before the Pennsylvania Historical Society in June, 1856, and printed by the Society, entitled "History of the Ordinance of 1787." His object was chiefly to controvert Mr. Webster's statement as to its authorship, and to claim the honor for Mr. Jefferson.

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The obscurity which has hung over the subject has arisen chiefly from the fact that in the old Continental Congress the proceedings were held in secret session, and no report of its debates was preserved. Its secret journal was printed some years later; but it was kept in so meagre and careless a manner that it is impossible from it to follow the business of the sessions. It was, moreover, regarded as a breach of confidence to speak of outside, or to write about, the business of Congress. Mr. Webster, relying on the secret journal, fell into many errors. If he had information from other sources, that, in many instances, was also erroneous. It was impossible to find in print at that time the facts on which an accurate statement of the matter could be made. Mr. Dane was then living in his seventy-eighth year, and died five years later. His pastor and biographer, the Rev. Christopher T. Thayer, has given in the sketch of his life, in Stone's History of Beverly, no further information on the subject than is contained in Mr. Webster's statement. Mr. Thayer, two years ago, informed the writer that he never heard Mr. Dane speak of the Ordinance, and was not aware that he had written upon it. Since that time three letters of Mr. Dane, treating the subject of the Ordinance, have come to the writer's notice: 1. The letter to Rufus King, dated July 16, 1787, already noticed. 2. A letter to Daniel Webster, dated March 26, 1830 (after Mr. Webster had made his second speech in reply to Hayne), which is printed in the Massachusetts Historical Society's Proceedings, 1867–69, p. 475. 3. A letter to J. H. Farnham, Secretary of the Indiana Historical Society, dated May 12, 1831, and printed in the "New York Tribune" of June 18, 1875. In all these letters Mr. Dane claims to be the author of the Ordinance, the same claim he makes in his "Abridgment and Digest of American Law," Vol. VII. p. 389. That he was the member of the committee who wrote the draft of the Ordinance which was submitted to and passed by Congress, there can be no question. A clerk of the committee, under instructions, might have performed this duty. Whether he was the author of the instrument, in the higher sense of furnishing its fundamental ideas, the occasion, the personal influence, the political motives, and the strategy which were needed to carry the measure through, and what services were

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rendered by other persons, are legitimate subjects of historical investigation, to which we will direct our inquiries.

Several ordinances for the government of the Northwestern Territory were before Congress from 1784 to 1787, and the first authentic information concerning them appeared in a paper prepared by Mr. Peter Force of Washington, and printed in the "National Intelligencer" of August 26, 1847. Mr. Force, when searching for materials for his "American Archives," found a parcel of manuscripts containing the original reports relating to these several ordinances, with the changes and amendments attached, their precise condition at different dates, and memoranda of the disposition made of them. His paper embodied a statement of these facts. Governor Coles, writing nine years later, was not even aware of the existence of Mr. Force's paper, and hence his statements and his conclusions were strangely inaccurate. Mr. Force's statement, valuable as it is, falls far short of being a complete account of the Ordinance. It, however, developed the fact, for the first time, that, instead of being under consideration for three years and six months, as Governor Coles and some other writers have asserted, it was, in the brief space of four successive days, drafted *de novo*, reported to Congress, took its first, second, and third reading, and was enacted by the unanimous vote of all the States present. Mr. Force was amazed at this sudden action, and confesses his inability to explain it. It is the good fortune of the writer to have in his possession original and contemporary manuscripts, and other authentic evidence, which will show how this sudden action was brought about, and who was the person that inspired and controlled this action.

It will be necessary, as a preparation for the new evidence to be presented, that a brief sketch be given of the several plans or ordinances for the government of the Northwestern Territory which were brought forward and considered by Congress prior to the real Ordinance, which was passed July 13, 1787.

On the 1st of March, 1784, a committee consisting of Mr. Jefferson of Virginia, Mr. Chase of Maryland, and Mr. Howell of Rhode Island, reported an ordinance for the temporary government of the territory, which should continue in force only until any of the ten States, whose boundaries were described,

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should have a population of twenty thousand free inhabitants. It further provided that any of the States may be admitted into the Union when their number of free inhabitants is as many as any one of the least numerous of the thirteen original States; and that the several States should bear the following names: Sylvania, Michigania, Cheronesus, Assenisipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, and Pelesipia. It proposed, also, five "articles of compact," which were quite unlike the six articles in the Ordinance of 1787. The fifth article was as follows: "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted to have been personally guilty."

The report was recommitted, and on the 22d of March a second report was made, substantially the same as the first, except that the fanciful names of the new States were stricken out. On the 19th of April, on motion of Mr. Spaight of North Carolina, seconded by Mr. Read of South Carolina, a vote was taken whether the fifth article of compact should stand. The vote was six States in the affirmative and three in the negative. In the old Congress the method of voting was quite different from that of the present Congress. All business was voted upon by States, and the affirmative vote of seven States, a majority of the original thirteen, was necessary to carry any measure. No State could vote unless it had at least two delegates present. In that case, both must vote in the affirmative, or the vote of the State was lost. If three delegates were present, two affirmative votes could carry the vote of the State. It seldom happened that as many as ten of the original thirteen States were represented at one time. Six States only voting for Mr. Jefferson's antislavery c ause, it was lost. The ordinance, without any slavery restriction, passed April 23, 1784; and was, chiefly from the absence of such a restriction, a dead letter. No settlement of the territory was made under it.

The defeat of Mr. Jefferson's antislavery clause was regarded at the time as a great calamity: but Northern men soon saw that it was a most fortunate circumstance; for if slavery had been allowed to get a foothold in the territory for

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sixteen years, it could not have been abolished at the end of that period. We have already seen what was the state of public sentiment in Illinois, Indiana, and Ohio at that time. Timothy Pickering of Massachusetts, writing to Rufus King, March 8, 1785, said: "I should have objected to the period proposed for the exclusion of slavery; for the admission of it for a day or an hour ought to have been forbidden. It is infinitely easier to prevent the evil at first than to eradicate it or check it at any future time. For God's sake, let one more effort be made to prevent so terrible a calamity."

March 10, 1784, seventeen days after the passage of his ordinance as amended, Mr. Jefferson resigned his seat in Congress, and, having been appointed minister to France, soon after left the country, and did not return till December, 1789. And yet Mr. Benton, Governor Coles, and others, with an entire misconception of the facts of the case, award to Mr. Jefferson the honor of being the author of the Ordinance of 1787, an entirely different instrument. Mr. Jefferson is, however, entitled to the credit of bringing forward and using his influence to carry, in opposition to the vote of his own and of every other Southern State, some sort of slavery prohibition; and especially of devising the happy idea of "articles of compact," which was made use of in the later Ordinance. Here Mr. Jefferson's claim of authorship ends.

March 16, 1785, eight days after the date of Mr. Pickering's letter just quoted, Mr. King of Massachusetts, seconded by Mr. Ellery of Rhode Island, moved that the following resolution be committed: —

"*Resolved*, That there shall be neither slavery nor involuntary servitude in any of the States described in the resolve of Congress of the 23d of April, 1784, otherwise than in the punishment of crimes whereof the party shall have been personally guilty; and that this regulation shall be an article of compact, and remain a fundamental principle of the Constitutions between the thirteen original States, and each of the States described in the said resolve of the 23d of April, 1784."

Eight States voted to commit, and three States (Virginia, North Carolina, and South Carolina) voted in the negative. The resolution was therefore referred to the committee of the

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whole, there being then no committee on the Territories. Delaware and Georgia were not then represented by delegates in Congress. Mr. Webster was mistaken as to the disposition of this resolution. He supposed the vote was upon its passage, whereas it was only on its commitment. He says: "The votes of nine States were not yet obtained, and thus the provision was again rejected by Southern votes." * The resolution went to the committee, and was never called up for action by Mr. King, Mr. Dane, or any other member; and so far as appears, was never again alluded to. It certainly was not incorporated into any of the several plans subsequently submitted, previous to July 11, 1787; and one of these may have been drawn by Mr. Dane, he being a member of the committee who reported it.

On the 24th of March, 1786, a report was made by the grand committee of the House to whom had been referred a motion of Mr. Monroe concerning the Western Territory. On the 10th of May of the same year, a committee consisting of Mr. Monroe of Virginia, Mr. Johnson of Connecticut, Mr. King of Massachusetts, Mr. Kean of South Carolina, and Mr. Pinckney of South Carolina, reported an ordinance for the Northwest Territory, which was recommitted, and considered from time to time. This committee was appointed on motion of Mr. Dane; but he was not a member of it. On September 19 of the same year, another committee, consisting of Mr. Johnson of Connecticut, Mr. Pinckney of South Carolina, Mr. Smith of New York, Mr. Dane of Massachusetts, and Mr. Henry of Maryland, appointed to propose a plan of temporary government of the territory, made a report which was discussed from time to time for several months. April 26, 1787, the same committee reported another ordinance, which took its second reading and was amended May 9. Its third reading was assigned for the following day. May 10, the third reading

* Works, Vol. III. p. 283. Mr. Dane, also, misconceived the import of this vote. He says: "So the article against slavery was supported, March 16, 1785, by a large majority, as an article of compact, and to remain a fundamental principle in the constitutions between the thirteen original States and each of the States in said territory." (General Abridgment and Digest, Vol. VII. p. 443.) If the vote had been on its enactment it would have passed, as the vote of seven States was sufficient for that purpose.

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was called for "by Massachusetts," as the record states, and probably by Mr. Dane, who was a member of the committee having it in charge. Mr. King and Mr. Gorham, both of Massachusetts, were also present. No vote was taken, and final action was postponed. Among the papers found by Mr. Force was the original draft of this ordinance as it stood on the 10th of May, and as it came down without amendment to the 9th of July, only five days before the real Ordinance of 1787 was passed. Mr. Force has printed its full text. That Mr. Dane or any other Northern man should have served on a committee which drafted such an ordinance, and called for its third reading on the 10th of May, 1787, is evidence that there were very crude ideas in Congress at that time as to what an ordinance defining the fundamental laws of the Northwestern Territory should be. It had no resemblance to the Ordinance which passed on the 13th of July. It had no restriction of slavery, none of those sublime principles as to personal and civil rights, education, religion, and morality, and the obligation of contracts, which appeared in the later Ordinance. It had no articles of compact; in short, it had none of those provisions which have made the Ordinance of 1787 so beneficial and renowned. Mr. Dane, in his letter to Mr. Webster, calls this the Report of 1786, for the reason probably that the committee was appointed in 1786. He says: "In its formation Mr. Pinckney, myself, and, I think, Smith, took a part. So little was done with the Report of 1786 that only a few lines were entered in the journals. I think the files, if to be found, will show that report was reformed, and temporary parts added to it by the committee of 1787." * Mr. Dane, in the lapse of forty-three years, had evidently forgotten the import of that report, for it was not printed in his lifetime, and he was in doubt whether it could be found. It has probably never been printed except in Mr. Force's paper, which was copied from the "National Intelligencer" into the "Western Law Journal," published at Cincinnati, for September, 1848. This report becomes important evidence in developing the history of the Ordinance of 1787, and is here reprinted: —

* Mass. Hist. Soc. Proceedings, 1867-69, p. 447.

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AN ORDINANCE FOR THE GOVERNMENT OF THE WESTERN TERRITORY.

It is hereby ordained by the United States in Congress assembled, that there shall be appointed, from time to time, a Governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress.

There shall be appointed by Congress, from time to time, a Secretary, whose commission shall continue in force for four years, unless sooner revoked by Congress. It shall be his duty to keep and preserve the acts and laws passed by the General Assembly, and public records of the District, and of the proceedings of the Governor in his executive department, and transmit authentic copies of such acts and proceedings every six months to the Secretary of Congress.

There shall also be appointed a Court, to consist of three judges, any two of whom shall form a Court, who shall have a common-law jurisdiction, whose commissions shall continue in force during good behavior. And to secure the rights of personal liberty and property to the inhabitants and others, purchasers in the said Districts, it is hereby ordained that the inhabitants of said Districts shall always be entitled to the benefits of the act of *habeas corpus* and of the trial by jury.

The Governor and judges, or a majority of them, shall adopt and publish in the Districts such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the District, and report them to Congress from time to time, which shall prevail in said District until the organization of the General Assembly, unless disapproved of by Congress; but afterwards the General Assembly shall have authority to alter them as they think fit: provided, however, that said Assembly shall have no power to create perpetuities.

The Governor for the time being shall be commander-in-chief of the militia, and appoint and commission all officers in the same below the rank of general officers: all officers of that rank shall be appointed and commissioned by Congress.

Previous to the organization of the General Assembly, the Governor shall appoint such magistrates and other civil officers in each county or township as he shall find necessary for the preservation of peace and good order in the same. After the General Assembly shall be organized, the powers and duties of magistrates and other civil officers shall be regulated and defined by the said Assembly; but all magistrates and other civil officers, not herein otherwise directed, shall, during the continuance of this temporary government, be appointed by the Governor.

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The Governor shall, as soon as may be, proceed to lay out the District into counties and townships, subject, however, to such alterations as may thereafter be made by the Legislature, so soon as there shall be five thousand free male inhabitants, of full age, within the said District. Upon giving due proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties and townships as aforesaid, to represent them in General Assembly: provided, that for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives amount to twenty-five; after which the number and proportion of representatives shall be regulated by the Legislature: provided, that no person shall be eligible or qualified to act as a representative, unless he be a citizen of one of the United States, or have resided within such District three years, and shall likewise hold, in his own right, in fee simple, two hundred acres of land within the same: provided also, that a freehold or life estate in fifty acres of land in the said District, if a citizen of any of the United States, and two years' residence if a foreigner, in addition, shall be necessary to qualify a man as elector for the said representative.

The representatives thus elected shall serve for the term of two years, and in case of the death of a representative, or removal from office, the Governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the time.

The General Assembly shall consist of the Governor, a Legislative Council, to consist of five members, to be appointed by the United States in Congress assembled, to continue in office during pleasure, any three of whom to be a quorum; and a House of Representatives, who shall have a legislative authority complete in all cases for the good government of the said District: provided, that no act of the said General Assembly shall be construed to affect any lands the property of the United States; and provided, further, that the lands of the non-resident proprietors shall in no instance be taxed higher than the lands of residents.

All bills shall originate indifferently either in the Council or House of Representatives, and, having been passed by a majority in both Houses, shall be referred to the Governor for his assent, after obtaining which they shall be complete and valid; but no bill or legislative act whatever shall be valid, or of any force without his assent. The Governor shall have power to convene, prorogue, and dissolve the General Assembly when in his opinion it shall be expedient.

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The said inhabitants or settlers shall be subject to pay a part of the Federal debts, contracted or to be contracted, and to bear a proportional part of the burdens of the Government, to be apportioned on them by Congress, according to the same common rule and measure by which apportionments thereof shall be made on the other States.

The Governor, Judges, Legislative Council, Secretary, and such other officers as Congress shall at any time think proper to appoint in such District, shall take an oath or affirmation of fidelity; the Governor before the President of Congress, and all other officers before the Governor, prescribed on the 17th day of January, 1785, to the Secretary of War, *mutatis mutandis.*

Whensoever any of the said States shall have of free inhabitants as many as are equal in number to the one-thirteenth part of the citizens of the original States, to be computed from the last enumeration, such State shall be admitted by its delegates into the Congress of the United States, on an equal footing with the said original States: provided the consent of so many States in Congress is first obtained as may at that time be competent to such admission.

Resolved, That the resolutions of the 23d of April, 1784, be and the same are hereby annulled and repealed. (*Western Law Jour.* V. 534.)

The impression which this draft made upon Mr. Force's mind he expressed as follows: "Such was the Ordinance for the government of the Western Territory when it was ordered to a third reading on the 10th of May, 1787. It had then made no further progress in the development of those great principles for which it has been distinguished as one of the greatest monuments of civil jurisprudence. It made no provisions for the equal distribution of estates. It said nothing of extending the fundamental principles of civil and religious liberty, — nothing of the rights of conscience, knowledge, or education. It did not contain the articles of compact which were to remain unaltered forever unless by common consent."

We now come to the time when these great principles were for the first time brought forward. On the 9th of July a new committee was appointed, consisting of Mr. Carrington of Virginia, Mr. Dane of Massachusetts, Richard Henry Lee of Virginia, Mr. Kean of South Carolina, and Mr. Smith of New York. The new members, Carrington, Lee, and Kean, were a majority, and all Southerners. Two days later this committee

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reported the great bill of rights known as the Ordinance of 1787.

Mr. Force, who accepted Mr. Webster's statement that Mr. Dane was the author of the Ordinance, was puzzled by the fact that Mr. Carrington, a new member from Virginia, was placed at the head of the committee, to the exclusion of Mr. Dane and Mr. Smith, both of whom had served on a previous committee, and he asked the reason why. Several other questions, quite as difficult of solution, must have suggested themselves to his mind. Why were three Southern members, all new men, and constituting a majority of the committee, put in charge of drafting an antislavery ordinance for a Northern territory, which had been defeated by the entire vote of the South three years before? If antislavery principles were so popular with Southern members, why did not Mr. Dane insert an antislavery clause in the ordinance which was to have taken its third reading on the 10th of May? As Mr. Johnson of Connecticut was the chairman of that committee, and three out of five of its members were Northern men, why did not the committee make it an antislavery ordinance? Whence did so much light dawn so suddenly upon the mind of Mr. Dane, when associated with a majority of Southern members on another committee? What is the explanation of the entire unanimity of feeling and action on the slavery question, then exhibited for the first and last time, in the whole history of our national legislation?

If Mr. Force had analyzed the vote by which the Ordinance passed four days after the committee was appointed, he would have been still further puzzled. New Hampshire, Rhode Island, Connecticut, Pennsylvania, and Maryland were not then represented by delegates in Congress, — all of them Northern and Middle States, except the last. Of the eight States represented, and all voting for the Ordinance, only three — Massachusetts, New York, and New Jersey — were Northern and Middle States. The Ordinance was really carried by the votes of Delaware, Virginia, North Carolina, South Carolina, and Georgia. The only individual who voted nay was Mr. Yates from New York. Mr. Dane subsequently explained this vote by saying, in his letter to Rufus King: "Yates ap-

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peared in this case, as in most others, not to understand the subject at all." As there were three delegates present from New York, the vote of Mr. Yates was neutralized.

Any satisfactory history of the Ordinance of 1787 must explain the enigmas we have suggested, and it must be a full and complete explanation. When the astronomer discovers irregular movements in a planet which cannot be explained by known causes, he infers that they arise from some outside and hitherto unknown body, and he sets himself to find it. The nature of the perturbations gives him an indication of the volume and locality of the occult influence. It is evident, from the investigation we have followed, that some sudden and potent influence was brought to bear upon Congress in the early days of July, 1787, which changed the whole current of action respecting the organic law for the government of the Northwestern Territory, which inspired new ideas, and suddenly crystallized in the matchless specimen of legislation which we are considering. What was that influence? To this inquiry we will now direct our attention.

On the afternoon of July 5, a dusty traveller, in the garb of a New England clergyman, arrived in New York City, and drove up, in his one-horse sulky, to the "Plow and the Harrow," a tavern in the Bowery; and sent his horse for entertainment to the Bowery barns. Twelve days before he had left his home in the town of Ipswich, in the eastern part of Massachusetts, and had made the journey in his private carriage, there being no public conveyances at that time. His business in New York was to buy of Congress, there in session, a million and a half acres of land in the Northwest Territory for a settlement under the auspices of the "Ohio Company of Associates." His name was Dr. Manasseh Cutler. He remained in New York and the vicinity about three weeks, bought his million and a half acres for the Ohio Company, and about four million acres for other parties. In April of the following year, the Ohio Company made the first English settlement of the Northwest Territory at Marietta, Ohio, at the mouth of the Muskingum, on the land which Dr. Cutler had bought on this occasion. General Washington, writing from Mount Vernon, two months later, said: "No colony in Amer-

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ica was ever settled under such favorable auspices as that which has just commenced at the Muskingum. Information, property, and strength will be its characteristics. I know many of the settlers personally, and there never were men better calculated to promote the welfare of such a community. If I were a young man, just preparing to begin the world, or, if advanced in life, and had a family to make a provision for, I know of no country where I should rather fix my habitation than in some part of that region."* While the good Doctor was in New York transacting this business, the Ordinance of 1787 was drafted and passed. The writer has in his possession the manuscript journal Dr. Cutler kept during this period, and only extracts from it have ever been printed. This journal supplements the material which Mr. Force discovered, and shedding light upon those few days in July, enables us to see why, how, and by whom, that sudden action of Congress was inspired.

A word of explanation is needed as to the Ohio Company, and some account of Dr. Cutler, who was its agent. The close of the Revolutionary war was marked by a period of the deepest financial distress. The country was exhausted. The officers and soldiers of the army had been paid off in government certificates bearing interest, which had depreciated to one sixth of their nominal value; business was stagnant, the country was flooded with these certificates, and the government had little available income and no credit on which it could borrow money. A scheme was devised by leading officers of the late army in the eastern part of Massachusetts, to form a company, the capital of which should be these depreciated certificates, for the purchase of land from the government for actual settlement. A meeting of officers for this purpose was held at the Bunch-of-Grapes Tavern in Boston, on the 1st of March, 1786. Such a company was formed, and subscription books were opened. On the 8th of March, 1787, the subscribers to the shares met again at Brackett's Tavern in Boston, and the committee on subscriptions made so favorable a report that Dr. Cutler, one of the directors and a chaplain in the late Revolutionary army, was instructed to proceed to New York and negotiate for the purchase of the land from Congress.

* Sparks's edition of Washington's Writings, Vol. IX. p. 385.

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Dr. Cutler, by his learning and personal accomplishments, was peculiarly qualified for such a mission. He was graduated twenty-two years before at Yale College. He had studied and taken regular degrees in the three learned professions of law, divinity, and medicine. As a scientist, however, he was best known. He was second, perhaps, to no living American, except Dr. Franklin, in scientific attainments. He was a member of the American Academy of Arts and Sciences at Boston, the American Philosophical Society at Philadelphia, the Massachusetts Medical Society, and other similar bodies. In the first volume of the "Memoirs of the American Academy," published in 1785, are four papers of his, on Astronomy, Meteorology, and Botany. These are their titles: —

1. Observations of the Transit of Mercury over the Sun, Nov. 12, 1782, at Ipswich.

2. Observations of an Eclipse of the Moon, March 29, 1782, and of an Eclipse of the Sun on the 12th of April following, at Ipswich.

3. Meteorological Observations at Ipswich in 1781, 1782, and 1783.

4. An Account of some Vegetable Productions naturally growing in this part of America, botanically arranged.

His paper on Botany, filling a hundred quarto pages, was the first scientific treatise on and classification of the plants of New England; and the first of the kind in this country. These papers, printed only two years before, gave him, as we see in his journal, a cordial *entrée* into all the literary and scientific circles in New York and Philadelphia. Harvard College had given him an honorary degree of A. M., and Yale College the degree of LL. D. Later Washington appointed him Judge of the Supreme Court of the Northwestern Territory, which honor he declined. Four years he was a member of Congress from the Essex district of Massachusetts, and a noted speech he there made on the subject of the Judiciary indicates the class of subjects he was competent to treat. The writer has conversed with and has letters from several aged persons who knew him intimately, and took pleasure in describing his characteristics. He was a person of stately and elegant form and courtly manners, and at the same time easy, affable, and

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communicative. He was much given to relating anecdotes, and making himself agreeable. His manners particularly impressed the Southern members, with whom he chiefly associated. They had never before seen, they said, such qualities as his in a Northern man. In his mental characteristics he much resembled Dr. Franklin, who was personally one of the most agreeable of men. His favorite topics of conversation, when he had sympathetic listeners, were science and natural history. Like Dr. Franklin, he took delight in the society of beautiful and accomplished women. His journal gives the minutest descriptions of the noted ladies he met in his travels, not omitting to describe their costumes, and the mode of dressing their hair.

His association with Southern members was most likely from motives of policy. He needed their votes. There was then a feeling in Congress, as there has been since, — whether justified or not does not now concern us, — that New England did not favor the settlement of the West. The Western interests looked to the South for support rather than to the East. This feeling was manifested in the debate in 1785 concerning the sale and disposition of the Western lands. The bill of 1785, which provided for the admirable system of Western land surveys, was reported by a committee of which a majority were Northern men. The original bill provided that each township a mile square should be sold complete before the next was offered for sale; in other words, that the people should buy clean as they went, or not at all, whatever might be the nature of the surface or character of the soil. New England members were accused of inserting this provision in order to prevent the sale of the lands. Mr. King of Massachusetts was charged, without doubt unjustly, of saying that it was his intention to oppose the formation of new States in the West. It was said that Massachusetts had thirty thousand square miles of territory in the Province of Maine for sale, and it was the policy of her members to turn emigration in that direction. Mr. Madison of Virginia moved to amend this objectionable feature of the bill, and it was done with the support of Southern votes. Virginia, having ceded her claims in the Northwestern Territory to the United States, regarded her-

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self as the special patron and supporter of its interests. Other States made a similar cession of their real or supposed claims, but those of Virginia were regarded as the most valid.

It was, therefore, Dr. Cutler's policy in furtherance of his Western project, to hold himself somewhat aloof from his New England associates, and to cultivate the friendship of the Southern members. Northern votes he could get when he needed them. Col. Carrington, Richard Henry Lee, and Mr. Grayson, all of Virginia, were, as appears by his journal, his warmest friends and confidential advisers. Dr. Holton, a distinguished member from Massachusetts, said he could not conceive how Dr. Cutler had so soon and so warmly engaged the friendship of members; for since he had been a member of that body he had never known so much attention paid to any one person.

With all his personal accomplishments and the spiritual graces of a New England clergyman, he had a large share of worldly wisdom. His journal furnishes evidence that the arts of the lobbyist were not invented in our day. In his business with Congress he regarded success as a duty. He found it difficult to enlist the interest of General St. Clair, the President of Congress, in his scheme. He found, also, that General St. Clair wanted to be Governor of the Northwestern Territory; and Dr. Cutler, representing the interests of the Ohio Company, intended that General Parsons of Connecticut should have that office. But he must have General St. Clair's influence, and found it necessary to pay the price. From the moment he communicated this decision, General St. Clair was warmly engaged in his interests, and the General *was* the first Governor of the Territory. In a letter written some years later to Mr. W. B. Giles of Virginia, General St. Clair said: "The office of Governor was in a great measure forced upon me." *

Mr. Dane was the representative of the Essex District in Massachusetts, where Dr. Cutler resided; he was born in Ipswich, where the Doctor was the settled minister. The latter, however, did not rely on Mr. Dane for making the acquaintance of the members of Congress. He brought letters of introduction

* Dillon's History of Indiana, p. 213.

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from President Willard of Harvard College, Governor Bowdoin, and other eminent citizens of Massachusetts. He gives an inventory of these letters, forty-two in number, which includes the names of Carrington, Lee, and Smith, three of the five members who reported the Ordinance of 1787. On the morning of the 6th of July — he had arrived in New York the evening before — the first person we find him in company with was Colonel Carrington, who was introducing him to the members on the floor of Congress, just before the session of the day began. He then delivered his petition for the purchase of land in the Northwest Territory. He dined that day with Mr. Dane and Mr. Milliken, Comptroller of the Treasury, and spent the evening with several members of Congress. The next day he made the acquaintance of Mr. Hutchins, Geographer of the United States, and consulted with him about the location of the purchase; dined with General Knox, Secretary of War; and took tea with Rev. Dr. Rogers, in company with Dr. Ewing, Dr. Witherspoon, and several other noted clergymen. Dr. Rogers was very urgent that Dr. Cutler should preach for him the next day; but he declined on account of fatigue. On Monday he dined with Sir John Temple, the British Consul-General, with a large company of gentlemen connected with the government. Mr. Dane and Dr. Holton were also invited, as Massachusetts representatives, out of respect to Dr. Cutler, as Sir John graciously informed him. This series of attentions was kept up during his stay in New York, and serves to illustrate the respect which was felt for his attainments and character. These social occasions, instead of interfering with his business, gave him the best opportunities for explaining his project and urging his suit. The sale of the public lands, he claimed, would absorb the floating debt of the country, which was fatal to the public credit. The sale of land to actual settlers was the most feasible, and indeed the only path out of the financial and business prostration under which the country was then laboring. The purchase he proposed would result in an immediate and immense emigration to the West of the most enterprising and patriotic men of the Northern States, and especially from New England, who would, without expense to the government, form a barrier of defence from the British on the

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north, and Indian tribes in the territory. At dinner-table with the heads of departments, the Board of the Treasury, and the leaders of public sentiment in Congress, he dwelt upon and enforced these arguments. His was the first proposal made for the purchase of the public lands. If his scheme of purchase failed, other propositions for Western settlement, he said, would fail also. His statements made a deep impression upon the heads of the government and upon the Southern members of Congress, whose influence he especially desired. They promised him their co-operation and their votes. Other parties now appeared before Congress with similar proposals of purchase for private speculation. Seeing that Dr. Cutler had more influence with Congress than they could bring to bear, they secretly placed their proposals in his hands; and he bought about five and a half million acres, of which only a million and a half were for his own company.

It was during these negotiations that the Ordinance of 1787 for the organization and government of the Northwestern Territory was drawn and passed. This, in fact, was the preliminary question to be settled; for unless the organic laws of the territory were fixed on an irrepealable basis, which harmonized with the moral, social, and political convictions of parties who were proposing to purchase, the lands would have no commercial value to them. Dr. Cutler represented Massachusetts men, who had, in their Constitution of 1780, abolished slavery, established public schools for general education, and framed the most advanced code of laws concerning the liberties and natural rights of man, civil jurisprudence, and public polity, which the world had then seen. No plan of emigration could have succeeded unless the New England man had felt that he was taking his laws and institutions with him to his Western home. The draft of an Ordinance, which had been before Congress for several months, had come down to the 9th of July in the bald and rudimentary condition in which we have seen it was offered for the third reading on the 10th of May.

Congress now awoke to the business of framing an instrument which would be satisfactory to the party proposing to purchase these lands. The interest of Southern members had been awakened and their prejudices allayed by the bland man-

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ners and persuasive arguments of the Northern agent. The South really had but little interest in the slavery question as applied to this territory. It had more land than it could occupy; and Southerners probably never conceived the possibility of their needing land or votes north of the Ohio River. The chief motive of the Southern members in voting unanimously for the Ordinance was doubtless to relieve the financial embarrassment of the government, and to bring the public lands into the market at the highest price.* It must also be borne in mind that there was then, and for the next five years, more antislavery sentiment in the South than ever existed there before or since. Mr. Jefferson, Patrick Henry, George Mason, George Wythe, St. George Tucker, and other prominent men of Virginia, were theoretically pronounced abolitionists. In these years there were State abolition societies in Virginia, Maryland, and Delaware, which held regular meetings, and developed more radical opinions as to the rights of man, and the civil and social equality of the negro, than Phillips or Garrison ever uttered. There were ten of these abolition societies in the Southern States during that period. Slavery had not then become a political and sectional issue.

The first public development of a change of policy on the matter of an ordinance was on the 9th of July, when the subject was referred to a new committee. Can there be any doubt that the character of the new Ordinance had been discussed in the negotiations for the purchase, and that the members of that committee were chosen by design, and with a definite understanding of what they were to do? Colonel Carrington of Virginia was made chairman. Lee of Virginia was also put on the committee. We have seen that they were Dr. Cutler's

* The remarks of Mr. Randolph of Virginia, in February, 1803, on the question of voting land to the Ohio School Fund, illustrate this point. "He believed," he said, "that the appropriation, while it protected the interests of literature, would enhance the value of property. Can we suppose that emigration will not be promoted by it, and that the value of lands will not be enhanced by the emigrant obtaining the fullest education for his children? and is it not better to receive two dollars an acre with an appropriation for schools, than seventy-five cents an acre without such appropriation? Indubitably it is. Gentlemen who are not operated upon by this principle, and a desire to establish a liberal provision for schools, will vote against the bill." — *Annals of Cong.*, 7th Cong., 2d sess, p. 586.

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intimate friends and advisers. Mr. Dane was his neighbor and representative, but there were reasons, as we shall presently see, why he was not made chairman. Mr. Smith of New York was one of the members to whom Dr. Cutler brought letters of introduction, and with whom he was intimate. Mr. Kean of South Carolina was probably a member of the Southern circle, with whom Dr. Cutler spent much of his time, whose views were known, and who would aid in carrying the three extreme Southern States. A majority of the members were composed of Southerners, in order to ward off the impression that it was a Northern measure. This committee took Dr. Cutler into their counsels, and, as his journal states, furnished him with a copy of the Ordinance which had been prepared, and asked him to make remarks and propose amendments, which he did. He delivered the draft with his remarks and amendments to the committee on the afternoon of July 10, and left New York that evening for a brief visit to Philadelphia, for the purpose of visiting Dr. Franklin, Dr. Rush, and other scientific correspondents of his, — he being a member of the American Philosophical Society of Philadelphia. He had a desire also to look in upon the Convention for the formation of the Constitution, there in session.*

He returned to New York on the evening of the 18th of July, and on the morning of the 19th called upon members of Congress. He then was shown the Ordinance which had passed on the 13th, and of which he had heard nothing during his absence.† He says: "The amendments I proposed have all been made except one, and that is better qualified. It is that we should not be subject to continental taxation until we were entitled to a full representation in Congress. This could not be

* The narrative he gives in his journal of his visit to Dr. Franklin is the most charming personal description of that eminent man which is extan . Mr. Sparks has printed it in his Life of Dr. Franklin, Vol. I. p. 519. Dr. Cutler's account of his visits to Dr. Rush, to the botanical garden of William Bartram, and to the studio of Charles Wilson Peale, the painter, are exceedingly interesting, and have never been printed. Dr. Rush informed him that they were endeavoring to raise a fund to establish a botanical garden in that city, and that he (Dr. Cutler) was the only person who had been named to take the superintendency, and give botanical lectures to the students in the University.

† The Ordinance was first publicly printed in the "Pennsylvania Herald" on the 25th of July.

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fully obtained, for it was considered in Congress as offering a premium on emigration."

On the 11th of July, the day after Dr. Cutler presented his amendments and views in writing, the committee reported the Ordinance to Congress, and it took its first reading. In this stage it had no antislavery clause, though one seems to have been agreed upon in committee. The next day, the 12th, this clause was offered by Mr. Dane, and without objection accepted as an amendment. Several minor amendments were also made, which Mr. Force in his paper specifies, and on the 13th the Ordinance, as amended, was passed in Congress by a unanimous vote, eight States only being represented.

What Dr. Cutler, Mr. Dane, Colonel Carrington, or any other member of the committee contributed to the Ordinance, the public records of the time are silent concerning. Mr. Dane doubtless wrote the draft, and performed the clerical duties of the committee. Its style, however, which is smooth, compact, and elegant, is not the style of Mr. Dane, which was loose, ragged, and inelegant. "He had no graces of style," says his biographer, "either native or borrowed; neither did he ever seek for any." * Some other hand than Mr. Dane's must have been concerned in its formation and revision. Mr. Dane assumed, however, the responsibility, under an entire misapprehension of the sentiments of Congress, of withholding the antislavery clause till the second reading. What would the Ordinance have been for the purpose for which it was intended without that clause? In the letter he wrote to Rufus King, July 16, three days after the passage, he says: "When I drew the Ordinance, which passed, a few words excepted, as I originally formed it, I had no idea the States would agree to the sixth article prohibiting slavery, as only Massachusetts of the Eastern States was present, and therefore omitted it in the draft; but, finding the House favorably disposed on the subject, after we had completed the other parts, I moved the article, which was agreed to without opposition." This statement shows how little he had entered into the work which had been done by another Massachusetts man to prepare Congress for this action.

The fact seems to be that the Massachusetts members never

* C. T. Thayer, in History of Beverly, p. 143.

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engaged with much zeal in any plan for settling the North-western Territory. They saw it would draw away the capital of their own State and thousands of its most enterprising citizens, as it did. No part of the State would suffer so much as Mr. Dane's own Essex District, where the shareholders of the Ohio Company chiefly resided. Massachusetts had an immense unoccupied territory in the Province of Maine on the market, and Maine was a part of her own jurisdiction. Dr. Cutler made use of this fact in his negotiations with Congress, — threatening, in case they did not give him the terms he desired, that the company would buy lands of Massachusetts. The Massachusetts members could not openly oppose the Western movement, because it was popular with their constituents, who had what was then called "the Ohio fever." Dr. Cutler did not have much confidence in the professed sympathy of his State delegation, and did not take them into his full confidence. He says in his journal: "Holton, I think, may be trusted; Dane must be carefully watched, notwithstanding his professions." Of Southern members he speaks thus: "Grayson, R. H. Lee, and Carrington are certainly my warm advocates. Lee tells me he has a speech, an hour long, prepared in my behalf, which he will deliver when he has an opportunity."

Mr. Dane in his letter to Rufus King seemed to be wholly unconscious of the fact that the Ordinance was a matchless specimen of legislation and jurisprudence. He rather spoke of it in apologetic terms, as a piece of patchwork hastily put together. He says: "With pleasure I communicate to you what we are doing in Congress, not so much from the consciousness that what we do is well done, as from a desire that you may be acquainted with our proceedings. . . . . We have been employed about several objects, — the principal of which has been the Government enclosed [meaning the Ordinance] and the Ohio purchase. The former you will see is completed, and the latter will probably be completed to-morrow. We tried one day to patch up ——'s ideas [the name is illegible] of Western government, started new ideas, and committed the whole to Carrington, Dane, R. H. Lee, Smith, and Kean. We met several times, and at last agreed on some principles, — at least Lee, Smith, and myself. We found ourselves rather

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pressed. The Ohio Company appeared to purchase a large tract of Federal lands, — about six or seven millions of acres [which is an overstatement of the quantity], and we wanted to abolish the old system, and get a better one for the government, and we finally found it necessary to adopt the best system we could get. All agreed finally to the enclosed plan except A. Yates." *

If the Ordinance had been his own sole production, he would doubtless have been more conscious of its merits, and spoken of it in more affectionate and complimentary terms.

The Ordinance of 1787 and the Ohio purchase were parts of one and the same transaction. The purchase *would* not have been made without the Ordinance, and the Ordinance *could* not have been enacted except as an essential condition of the purchase. Both were before Congress and under consideration at the same time, and Colonel Carrington was the chairman of the committees which reported and carried through both measures. The dates of their passage were separated by an interval of only two weeks. The Ordinance has hitherto been treated as an isolated piece of legislation, and as such it has been a marvel and an enigma. When considered together, every fact in the origin and passage of the Ordinance is explained, and is found to be connected with the agency of Dr. Manasseh Cutler. He was the person of the most varied accomplishments, the widest learning, the largest personal influence, and the one most active and deeply interested in the subject-matter of the Ordinance of all who had a part in its formation. He was then forty-five years of age, and in the prime of his manhood and mental culture. Mr. Dane was eleven years younger, and only five years before had commenced the practice of law. At the age of twenty-one years he was at work on his father's farm, and had not commenced his preparation for college. Four years after graduating he spent as a school-teacher. He had written nothing at that time which was in print. Later in life, he had the reputation of an author; but his "General Abridgment and Digest of American Law" appeared from 1823 to 1829, thirty-six to forty-two years later. He entered Congress in 1785, retired

* New York Tribune, February 28, 1855.

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in 1788, and was never afterwards a member of the national Legislature. In 1795 and in 1812 he served as commissioner to revise the statutes of Massachusetts. Late in life he prepared an elaborate work, entitled "A Moral and Political Survey of America," which was never printed. His affectionate biographer says of it: "The 'Survey' evinces unquestionably great research, and comprehends a vast amount of information; but it is marked with the same neglect of style which is so obvious in Mr. Dane's other writings."

The Ordinance of 1787 is a condensed abstract of the Massachusetts Constitution of 1780. Every principle contained in the former, either in a germinal or developed form, except that relating to the obligation of contracts, and some temporary provisions relating to the organization of the territorial government, is found in the latter, and often in the same phraseology. The Ohio Company, organized in Massachusetts, and mainly composed of Massachusetts men, was the party proposing to purchase these lands. That these prospective emigrants should desire and claim the privilege of living under the laws and with the institutions they had cherished and helped to frame, was as natural and reasonable as that this boon should have been granted to them by Congress. There was no intention on the part of Congress, or of any member, of forming an ordinance on this basis, until after Dr. Cutler had arrived in New York on the 5th of July. The idea was as new to Mr. Dane as to any member. His previous efforts at ordinance-making had been in another direction. The new point of procedure having been fixed, the drafting of the Ordinance was much a matter of clerical routine. The work was evidently turned over to Mr. Dane, he being the only member of the committee who was familiar with the Massachusetts Constitution. It is singular that in the several letters and statements on the subject which Mr. Dane has left behind him, no mention is made of Dr. Cutler, or of his presence in New York at that time. In his letter to Mr. King, written three days after the passage of the Ordinance, he did say that "the Ohio Company appeared to purchase a large tract of Federal lands"; but in his letters to Mr. Webster and to the Indiana Historical Society, written from forty to fifty years later, he

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forgot to mention even the presence of the Ohio Company, and claimed the whole credit of the Ordinance for himself. In his letter of March 26, 1830, to Mr. Webster, he says: "In pages 389, 390, Sect. 3, Vol. VII. [of General Abridgment and Digest], I mention the Ordinance of '87 was framed, mainly, from the laws of Massachusetts. This appears on the face of it; meaning the titles to estates, and nearly all the six articles, the *permanent* and important parts of it, and some other parts; and, in order to take the credit of it to Massachusetts, I added 'this Ordinance (formed by the author, etc.) was framed,' etc. . . . . I have never claimed *originality*, except in regard to the clause against impairing contracts, and perhaps the Indian article, part of the third article, including, also, religion, morality, knowledge, schools, etc." *

His claim in Appendix to the ninth volume of his "General Abridgment and Digest, Note A, published in 1830, is, owing to the obscurity of his style, difficult to understand. He quoted this note in his letter of May 12, 1831, to the Indiana Historical Society. He says: "It will be observed that provisions 4, 5, and 6, some now view as oppressive to the West, were taken from Mr. Jefferson's plan. The residue of the Ordinance consists of two descriptions, one original, as the provisions to prevent legislatures enacting laws to impair contracts previously made, to secure the Indians their rights and property, part of the titles to property made more purely republican and more completely divested of feudality than any other titles in the Union were in July, '87. The temporary organization was new, — no part of it was in the plan of '84. The other description was selected mainly from the Constitution and laws of Massachusetts, as any one may see who knows what American law was in 1787, as: 1. Titles to property by will, by deed, by descent, and by delivery. Here it may be observed that titles to lands once taking root are important, as they are usually permanent; in this case, they were planted in four hundred thousand square miles of territory, and took root, as was intended. 2. All the fundamental, perpetual articles of compact, except as below, as, first, securing forever religious liberty; second, the essential parts of a bill of rights

* Mass. Hist. Soc. Proceedings, 1867-69, p. 479.

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declaring that religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and education shall forever be encouraged. These selections from the Code of Massachusetts, as also the titles to property, have created for her an extensive and lasting influence in the West, and of the most republican, liberal, and beneficial kind." *

Some persons reading this note will understand him to say that the clause relating to religion, morality, and education was taken from the Code of Massachusetts; but such was evidently not his intention, as it would contradict the claim he made about the same time in his letter to Mr. Webster. These extracts illustrate Mr. Dane's style of writing, and the claims he has made as to the authorship of the Ordinance. None of these claims were made during the lifetime of Dr. Cutler or of any person immediately concerned in its formation.

There is nothing in the Ordinance of 1787 concerning religion, morality, knowledge, and schools which had not been practically exemplified in the laws and customs of Massachusetts, and which were not embodied in her Constitution of 1780. These principles were happily condensed in the Ordinance into a single sentence as follows: "Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." No part of the Ordinance — the antislavery clause alone excepted — has been more noted than this sentence, and it has a place in the constitutions of several of the Western States. There is evidence tending to show that Dr. Cutler was the author of this clause; that it was one of the amendments or suggestions which he made in writing at the request of the committee. Its style, and the efforts he subsequently made for the establishment of the institutions of religion and education in the territory, to be presently noticed, render the inference highly probable. Accepted by the committee and incorporated in the draft by Mr. Dane, he (Mr. Dane) after the lapse of more than forty years may have forgotten its origin. There have been traditions and positive evidence in the family of Dr. Cutler, since his death,

* New York Tribune, July 18, 1875.

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that he caused the insertion, in the Ordinance of 1787, of the clause quoted above, and also of the one relating to the prohibition of slavery. Several autograph letters are in the possession of the writer which are evidence on this point.

Dr. Joseph Torrey, an eminent physician of Salem, Mass., who married a daughter of Dr. Cutler, wrote January 30, 1847, to Judge Ephraim Cutler of Ohio as follows: "At a recent professional call at Hamilton,* Brother Temple [Cutler] produced large files of Ohio documents, but I had only time for a hasty examination. I saw among these documents the Ordinance of 1787 on a printed sheet. On its margin was written that Mr. Dane requested Dr. Cutler to suggest such provisions as he deemed advisable, and that at Dr. Cutler's instance was inserted what relates to religion, education, and slavery. These facts have long been known to me as household words." The letter further states that Hon. Caleb Cushing and Hon. Daniel Webster had inquired what agency Dr. Cutler had in framing the famous Ordinance, and as to the authorship of an anonymous pamphlet of twenty-four pages which Dr. Cutler wrote and had printed at Salem in 1787, describing the Northwestern Territory, and entitled "An Explanation of the Map which delineates that part of the Federal Lands comprehended between Pennsylvania West Line, the Ohio and Scioto Rivers, and Lake Erie." †

Temple Cutler, of Hamilton, Mass., writing September 29, 1849, to Judge Cutler of Ohio (both sons of Dr. Cutler), and speaking of the interest in New England on the subject of the Ordinance, says: "Hon. Daniel Webster is now convinced that the man whose foresight suggested some of its articles was our father."

Judge Ephraim Cutler, November 24, 1849, wrote to a gentleman making inquiries on the subject, as follows: "I visited my father at Washington during the last session he attended Congress [1804]. In his boarding-house he occupied a room with

* The town of Ipswich was divided in 1793, and the part of the town where Dr. Cutler resided was set off, and incorporated as the town of Hamilton.

† This pamphlet, now very rare, was reprinted in Nahum Ward's "Brief Sketch of the State of Ohio," Glasgow, 1822, and London, 1823; and a French translation was issued in Paris in 1789. A copy of the original pamphlet was sold at the recent auction sale of Mr. Fields's Library, in New York, for twenty-one dollars.

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the reverend gentleman who represented Hampshire and the Connecticut River Counties, whose name I have forgotten. We were in conversation relative to the political concerns of Ohio, the ruling parties, and the effects of the [Ohio] Constitution in the promotion of the general interest; when he observed that he was informed that I had prepared that portion of the Ohio Constitution which contained the part of the Ordinance of July, 1787, which prohibited slavery. He wished to know if it was a fact. On my assuring him it was, he observed that he thought it a singular coincidence, as he himself had prepared that part of the Ordinance while he was in New York negotiating the purchase of the lands for the Ohio Company. I had then not seen the journal he kept while he was in New York at that time. The journal came into my possession during a visit of Dr. Torrey and my sister, Mrs. Torrey, in 1837." *

Dr. Cutler's interest in the promotion of religion and education in the Northwestern Territory appears in his negotiations with Congress for the Ohio purchase. The general law for the survey and sale of Western lands, passed by Congress May 20, 1785, provided that one section (No. 16) in every township should be reserved for the support of common schools. Dr. Cutler was not satisfied with this provision, and demanded that Congress should donate in addition one section in every township for the support of an educated ministry, and two entire townships for the establishment and support of a university. This new claim was resisted by members of Congress. One bill passed authorizing the Ohio Company's purchase, but without these additional reservations; and Dr. Cutler would not accept it. He packed his trunk, made his parting calls, said he should leave the town immediately, and make his purchase of some of the States. This was somewhat of a ruse on his part, and it turned out as he expected. Members flocked to his room and entreated him to remain, and they would try to get more favorable terms. He wrote out these conditions as a *sine qua non* on which he would make the contract, and brought Congress to vote precisely the terms he

* Judge Cutler, from the time he was three years old till his emigration to Ohio, resided with his grandparents in Connecticut, and hence had lived with his father only on occasional visits.

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dictated. He had full powers from the Company to negotiate alone the terms of the purchase; but, if he thought it advisable, when reaching New York, to associate with himself Mr. Winthrop Sargent, he could do so. Near the close of the negotiation he invited Mr. Sargent to join with him, and they both signed the contract.

In an autograph letter to his son Judge Cutler, written August 7, 1818, when he was seventy-six years of age, Dr. Cutler says: "The fact is, the people of Ohio are wholly indebted to me for procuring the grant of those townships [for the University] and the ministers' lands in the Ohio Company's purchase; and indeed for similar grants in Judge Symmes's purchase. When I applied to Congress for the purchase, no person, to my knowledge, had an idea of asking for such grants. When I mentioned it to Mr. Sargent and others friendly to the measure, they were rather opposed, fearing it would occasion an increased price for the lands. I had previously contemplated the vast benefit that must be derived from it in future time, and I made every exertion to obtain it. Mr. Sargent, indeed, cordially united with me in endeavoring to surmount the difficulties which appeared in the way, till the object was obtained. . . . . It is well known to all concerned with me in transacting the business of the Ohio Company, that the establishment of a University was a first object, and lay with great weight on my mind."

The Ohio University, at Athens, the first college in the Northwest, was established on this foundation; and Dr. Cutler himself drew the act of incorporation, arranged the course of study, and selected the instructors. He was the author of that public policy which has been so beneficial to the educational interests of these Northwestern States, of reserving public lands for the support of universities.

Three of his sons came to Ohio and took prominent parts in its settlement. Dr. Cutler himself never removed his residence from Massachusetts. He came to Marietta, in his sulky, on a visit of inspection, and to attend a meeting of the Directors of the Ohio Company, in the summer of 1788, where he was honored as one of the chief promoters of the enterprise. He died in the parish where he had been the settled minister

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for more than fifty-two years, July 28, 1823, at the age of eighty-one.

His eldest son, Judge Ephraim Cutler, already mentioned, was a member of the Territorial Legislature, Judge of the Court of Common Pleas, and member of the Convention which formed the Constitution of Ohio, in which he almost wholly shaped and drafted the judicial system of the State, and successfully resisted the well-laid scheme of setting aside the antislavery provision of the Ordinance. He was later a member of the State Legislature, and planned the common-school system of the State. Another son, Jervis Cutler, said to be the first emigrant who landed at Marietta, wrote a "Topographical Description of the States of Ohio, Indiana Territory and Louisiana, comprising the Ohio and Mississippi Rivers," 219 pp. 12mo, which was published in 1812, and illustrated with engravings by his own hand. Judge Cutler's son, Hon. William P. Cutler, still living at Marietta, and one of the most prominent men of Southeastern Ohio, was a member of Congress from Ohio from 1860 to 1862.

The fact that no biography of so eminent a man as Dr. Manasseh Cutler has appeared, requires a word of explanation. Twenty-seven years ago, a gentleman who had written several historical works of merit, and who is now librarian of one of the State historical societies, applied to the family of Dr. Cutler for his manuscripts and papers, in order to prepare his biography; and the papers which the family then possessed, or copies of them, were delivered to him. A printed circular, dated March 8, 1849, which he sent to the correspondents and friends of Dr. Cutler, asking for further contributions of letters and other materials, is before the writer. During these long years this gentleman has professed to be deeply interested in the work, and to be constantly finding new evidences of his subject's versatility of genius and works of usefulness; but the biography itself, for some unexplained reason, has not been published. The materials in the hands of the biographer have not been accessible to the writer in the preparation of this paper; but the family in Ohio, at the writer's request, have kindly furnished to him such papers as they possess. A recent note from the biographer assures the writer that the long-promised life of Dr. Cutler will soon appear.

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The delay in the publication of his biography will explain why the name of Dr. Manasseh Cutler is not more familiar to the historical students of the Northwestern States, and has not hitherto been associated with the origin and history of the Ordinance of 1787.

WILLIAM FREDERICK POOLE.

Montezuma's dinner

ART. II. — *Native Races of the Pacific States.* By HUBERT HOWE BANCROFT. New York: D. Appleton & Co. — *Civilized Nations*, Vol. II. By Lewis H. Morgan.

THE first accounts of the pueblo of Mexico created a powerful sensation in Europe. In the West India Islands the Spanish discoverers found small Indian tribes under the government of chiefs; but on the continent, in the Valley of Mexico, they found a confederacy of three Indian tribes under a more advanced but similar government. In the midst of the valley was a large pueblo, the largest in America, surrounded with water, approached by causeways; in fine, a water-girt fortress impregnable to Indian assault. This pueblo presented to the Spanish adventurers the extraordinary spectacle of an Indian society lying two ethnical periods back of European society, but with a government and plan of life at once intelligent, orderly, and complete. There was aroused an insatiable curiosity for additional particulars, which has continued for three centuries, and which has called into existence a larger number of works than were ever before written upon any people of the same number and of the same importance.

The Spanish adventurers who captured the pueblo of Mexico saw a king in Montezuma, lords in Aztec chiefs, and a palace in the large joint-tenement house occupied, Indian fashion, by Montezuma and his fellow-householders. It was, perhaps, an unavoidable self-deception at the time, because they knew nothing of the Aztec social system. Unfortunately it inaugurated American aboriginal history upon a misconception of Indian life which has remained substantially unquestioned to the present hour. The first eyewitnesses gave the keynote to

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this history by introducing Montezuma as a king, occupying a palace of great extent and crowded with retainers, in the midst of a grand and populous city over which, and much beside, he was reputed master. But king and kingdom were in time found too common to express all the glory and splendor the imagination was beginning to conceive of Aztec society; and emperor and empire gradually superseded the more humble conception of the conquerors.

At this late day an enthusiasm and an industry great enough to produce the five volumes entitled "The Native Races of the Pacific States" inspire our respect. Enthusiasm coupled with industry has performed great work for mankind in all ages; but when controlled by a glowing and unguarded imagination, there is danger, as these volumes witness, of a misconception of the materials under treatment, of inflation, of exaggeration, of delusive theories, and of false conclusions. It is an ungracious task to point out, from a sense of duty, old errors herein reproduced and re-endorsed, and thus come into antagonism with an author for whom his critic can but feel a sentiment of respect.

In the second volume of this work, with which alone this article will be concerned, the high and mighty emperor of the Aztecs, whose supposed subjects must have numbered, the Tezcucans and Tlacopans included, nearly two hundred and fifty thousand Red Indians, and the great Aztec empire, which covered an area as large as the whole State of Rhode Island, are again brought magnificently before our astonished minds.*

* The Valley of Mexico, including the adjacent mountain slopes and excluding the area covered by water, was about equal to the State of Rhode Island, which contains thirteen hundred square miles; an insignificant area for a single American Indian tribe. But the Confederacy had subdued a number of tribes southward and southeastward from the valley as far as Guatemala, and placed them under tribute. Under their plan of government it was impossible to incorporate these tribes in the Aztec Confederacy, the barrier of language furnished an insuperable objection; and they were left to govern themselves through their own chief, and according to their own usages and customs. As they were neither under Aztec government nor Aztec usages, there is no occasion to speak of them as a part of the Aztec Confederacy, or even as an appendage of its government. The power of this Confederacy did not extend a hundred miles beyond the Valley of Mexico on the west, northwest, north, northeast, or east sides, in each of which directions they were confronted by independent and hostile tribes.

The population of the three confederate tribes was confined to the valley, and did

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There is even a plethora of empires, kings, and lords in this volume, — for example, the Toltec empire, the Chichemec empire, and the Aztec empire, one after the other; the Votan empire and the Quiche empire in the little territory of Guatemala; the kings of Tezcuco, the kings of Tlacopan, the kings of Michoacan, the kings of Tollan, and other kings as thick as blackbirds; besides princes, "nobles, gentry, plebeians, and slaves,"* *ad nauseam*. All the grand terminology of the Old World, created under despotic and monarchical institutions during several thousand years of civilization, to decorate particular men and classes of men, has been lavished by our author with American prodigality upon plain Indian sachems and war-chiefs, without perceiving that thereby the poor Indian was grievously wronged, for he had not invented such institutions nor formed such a society as these terms imply.

This work, it must be admitted, is in entire harmony with the body of works on Spanish America. It embodies their extravagances, their exaggerations, their absurdities, and runs beyond them in fervor of imagination and in recklessness of statement. A psychological fact, which deserves a moment's notice, is revealed by these works, written as they were with a desire for the truth and without intending to deceive. These writers ought to have known that every Indian tribe in America was an organized society, with definite institutions, usages, and customs, which, when ascertained, would have perfectly explained its government, the social relations of the people, and their plan of life. Indian society could be explained as completely and understood as perfectly as the civilized society of Europe or America, by finding its exact organization. This, strange to say, was never attempted, or at least never accomplished, by any one of these numerous and volu-

not probably exceed two hundred and fifty thousand souls, if it equalled that number, which would give nearly twice the present population of New York to the square mile, and a greater population to the square mile than Rhode Island now contains. The Spanish estimates of Indian populations were gross exaggerations. Those who claim a greater population for the Valley of Mexico than that indicated will be bound to show how a barbarous people, without flocks and herds and without field agriculture, could have sustained in equal areas a larger number of inhabitants than a civilized people armed with these advantages.

* Civilized Nations, p. 124.

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minous writers. To every author, from Cortes and Bernal Diaz to Brasseur de Bourbourg and Hubert H. Bancroft, Indian society was an unfathomable mystery; and their works have left it a mystery still. Ignorant of its structure and principles, and unable to comprehend its peculiarities, they invoked the imagination to supply whatever was necessary to fill out the picture. When the reason, from want of facts, is unable to understand and therefore unable to explain the structure of a given society, imagination walks bravely in and fearlessly rears its glittering fabric to the skies. Thus, in this case, we have a grand historical romance, strung upon the conquest of Mexico as upon a thread; the acts of the Spaniards, the pueblo of Mexico, and its capture, are historical, while the descriptions of Indian society and government are imaginary and delusive. These picturesque tales have been read with wonder and admiration, as they successively appeared, for three hundred and fifty years; though shown to be romances, they will continue to be read, as Robinson Crusoe is read, not because they are true, but because they are pleasing. The psychological revelation is the eager, undefinable interest aroused by any picture of ancient society. It is felt by every stranger when he first walks the streets of Pompeii, and, standing within the walls of its roofless houses, strives to picture to himself the life and the society which flourished there eighteen hundred years ago. In Mexico the Spaniard found an organized society several thousand years further back of their own than Pompeian society, in its arts, institutions, and state of advancement. It was this revelation of a phase of the ancient life of mankind, which possessed, and still possesses, such power to kindle the imagination and inspire enthusiasm. It caught the imagination and overcame the critical judgment of Prescott, our most charming writer; it ravaged the sprightly brain of Brasseur de Bourbourg; and it carried up in a whirlwind our author at the Golden Gate.

The appearance of this work just as it is, and the commendation it has received from our critical journals, reveal with painful distinctness the fact that we have no science of American Ethnology. Such a science, resting as it must upon verified facts, and dealing with the institutions, arts, and inventions,

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usages and customs, languages, religious beliefs, and plan of government of the Indian tribes, would, were it fairly established, command as well as deserve the respect of the American people. With the exception of an amateur here and there, American scholars have not been willing to devote themselves to so vast a work. It may be truly said, at this moment, that the structure and principle of Indian society are but partially known, and that the American Indian himself is still an enigma among us. The question is still before us, as a nation, whether we will undertake the work of furnishing to the world a scientific exposition of Indian society, or leave it as it now appears, crude, unmeaning, unintelligible, a chaos of contradictions and puerile absurdities. With a field of unequalled richness and of vast extent, with the same Red Race in all the stages of advancement indicated by three great ethnical periods, namely, the status of savagery, the Lower status of barbarism, and the Middle status of barbarism,* more persons ought to be found willing to work upon this material for the credit of American scholarship. It will be necessary for them to do as Herodotus did in Asia and Africa, to visit the native tribes at their villages and encampments, and study their institutions as living organisms, their condition, and their plan of life. When this has been done from the region of the Arctic Sea to Patagonia, Indian society will become intelligible, because its structure and principles will be understood. It exhibits three distinct phases, each with a cult peculiar to itself, lying back of civilization, and back of the Upper status of barbarism; having very little in common with European society of three hundred years ago, and very little in common with American society of to-day. Its institutions, inventions, and customs find no analogues in those of civilized nations, and cannot be explained in terms adapted to such a society. Our later investigators are doing their work more and more on the plan of

* Indian tribes below the art of pottery, as a number of coast tribes in North and South America, were in savagery; tribes practising this art, as the tribes of the United States east of the Mississippi, but ignorant of the use of adobe bricks and stone in house architecture, were in the Lower status of barbarism; and those tribes who constructed houses of adobe bricks and of stone, but who were ignorant of iron, as the tribes of New and Old Mexico, Central America, and Peru, were in the Middle status of barbarism.

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direct visitation; and I make no doubt a science of American Ethnology will yet come into existence among us, and rise high in public estimation from the important results it will rapidly achieve. Precisely what is now needed is the ascertainment and scientific treatment of this material.

After so general a condemnation of Spanish and American writers, so far as they represent Aztec society and government, some facts and some reasons ought to be presented to justify the charge. Recognizing the obligation, I propose to question the credibility of so much of the second volume of "The Native Races," and of so much of other Spanish histories as relate to two subjects, — the character of the house in which Montezuma resided, which is styled a palace; and the account of the celebrated dinner of Montezuma, which is represented as the daily banquet of an imperial potentate. Neither subject, considered in itself, is of much importance; but if the accounts in these two particulars are found to be fictitious and delusive, a breach will be made in a vital section of the fabric of Aztec romance, now the most deadly encumbrance upon American Ethnology.

It may be premised that there is a strong probability, from what is known of Indian life and society, that the house in which Montezuma lived was a joint-tenement house of the aboriginal American model, owned by a large number of related families, and occupied by them in common as joint-proprietors; that the dinner in question was the usual single daily meal of a communal household, prepared in a common cook-house from common stores, and divided, Indian fashion, from the kettle; and that all the Spaniards found in México was a simple confederacy of three Indian tribes, the counterpart of which was found in all parts of America.

It may be premised further, that the Spanish adventurers who thronged to the New World after its discovery found the same race of Red Indians in the West India Islands, in Central and South America, in Florida, and in Mexico.* In their

* "But among all the other inhabitants of America there is such a striking similitude in the form of their bodies, and the qualities of their minds, that notwithstanding the diversities occasioned by the influence of climate, or unequal progress in improvement, we must pronounce them to be descended from one source." — *Robertson's History of America*, Law's ed., p. 69.

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mode of life and means of subsistence, in their weapons, arts, usages, and customs, in their institutions, and in their mental and physical characteristics, they were the same people in different stages of advancement. No distinction of race was observed, and none in fact existed. They were broken up into numerous independent tribes, each under the government of a council of chiefs. Among the more advanced tribes, confederacies existed, which represented the highest stage their governmental institutions had attained. In some of them, as in the Aztec confederacy, they had a principal war-chief, elected for life or during good behavior, who was the general commander of the military bands. His powers were those of a general, and necessarily arbitrary when in the field. Behind this war-chief — noticed, it is true, by Spanish writers, but without explaining or even ascertaining his functions — was the council of chiefs, "the great council without whose authority," Acosta remarks, Montezuma "might not do anything of importance." * The civil and military powers of the government were in a certain sense co-ordinated between the council of chiefs and the military commander. The government of the Aztec confederacy was essentially democratical, because its organization and institutions were so. If a more special designation is needed, it will be sufficient to describe it as a military democracy.

The Spaniards who overran Mexico and Peru gave a very different interpretation of these two organizations. Having found, as they supposed, two absolute monarchies with feudal characteristics, the history of American Indian institutions was cast in this mould. The chief attention of Europeans in the sixteenth century was directed to these two governments, to which the affairs of the numerous remaining tribes and confederacies were made subordinate. Subsequent history has run in the same grooves for more than three centuries, striving diligently to confirm that of which confirmation was impossible. The generalization was perhaps proper enough, that if the institutions of the Aztecs and Peruvians, the most advanced Indian tribes, culminated in monarchy, those of the Indian tribes

* The Natural and Moral History of the East and West Indies, Lond. ed., 1604, Grimstone's Trans., p. 485.

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generally were essentially monarchical, and therefore those of Mexico and Peru should represent the institutions of the Red Race.

It may be premised, finally, that the histories of Spanish America may be trusted in whatever relates to the acts of the Spaniards, and to the acts and personal characteristics of the Indians; in whatever relates to their weapons, implements, and utensils, fabrics, food, and raiment, and things of a similar character. But in whatever relates to Indian society and government, their social relations and plan of life, they are wholly worthless, because they learned nothing and knew nothing of either. We are at full liberty to reject them in these respects, and commence anew; using any facts they may contain which harmonize with what is known of Indian society. It was a calamity to the entire Red Race that the achievements of the Village Indians of Mexico and Central America, in the development of their institutions, should have suffered a shipwreck so nearly total. The only remedy for the evil done them is to recover, if possible, a knowledge of their institutions which alone can place them in their proper position in the history of mankind.

In order to understand so simple an event in Indian life as Montezuma's dinner, it is necessary to know certain usages and customs, and even certain institutions of the Indian tribes generally, which had a direct bearing upon the dinner of every Indian in America at the epoch of the Spanish conquest. Although it may seem strange to the reader, it requires a knowledge of several classes of facts to comprehend this dinner; because it is necessary to rid the mind of a fictitious account before another can be substituted. For this purpose, and within the necessary limits of this article, I shall endeavor to explain, in outline, the following institutions and customs which were substantially universal in the Indian family, and therefore existed, presumptively, among the Aztecs. Reference will also be made to what is known of their existence and practice among the latter. They are the following: —

1. The organization in gentes, phratries, and tribes. 2. The ownership of lands in common. 3. The law of hospitality. 4. The practice of communism in living. 5. The

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communal character of their houses. 6. Their custom of having but one prepared meal each day, — a dinner. 7. Their separation at meals, the men eating first, and the women and children afterwards.

Since the writers upon Aztec affairs did not consider any of these subjects worthy of investigation except the second, it is necessary to show their general prevalence in other Indian tribes to create a probability of their prevalence among the Aztecs, as well as to give effect to such traces of their existence among the latter as these writers have incidentally furnished. The necessity for this lengthy process is entailed upon us by the imperfection of the Spanish accounts.

1. *The Organization in Gentes, Phratries, and Tribes.*

The gentile organization opens to us one of the oldest and most widely prevalent institutions of mankind. It furnished the nearly universal plan of government of ancient society, Asiatic, European, African, Australian, and American. It was the instrumentality by means of which society was organized and held together. Commencing in savagery, and continuing through the three sub-periods of barbarism, it remained until the establishment of political society, which did not occur until after civilization had commenced. The Grecian gens, phratry, and tribe, the Roman gens, curia, and tribe, find their analogues in the gens, phratry, and tribe of the American aborigines. In like manner, the Irish sept, the Scottish clan, the phrara of the Albanians, and the Sanskrit *ganas*, without extending the comparison further, are the same as the American Indian gens, which has usually been called a clan. As far as our knowledge extends, this organization runs through the entire ancient world upon all the continents, and it was brought down to the historical period by such tribes as attained to civilization.

It is necessary to know the character and prevalence of this organization among the Indian tribes as a means of understanding Aztec society. The Iroquois, whose system is perfectly known, will afford the best illustration. The Seneca Iroquois tribe is composed of eight gentes. A gens is a body of consanguinei, the members of which bear a common gen-

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tile name, as Wolf, Bear, Beaver, Turtle, etc. With descent in the female line, as among the Iroquois, the gens is composed of a supposed female ancestor and her children, together with the children of her female descendants in perpetuity. It includes this ancestor and her children, the children of her daughters and the children of her female descendants, while the children of her sons and the children of her male descendants are excluded. The latter belonged to the gentes of their respective mothers. A moiety only of the descendants of the supposed ancestor belong to the gens. When descent is in the male line, as it was among the Greeks, and among the Mayas of Yucatan, the gens is composed of a supposed male ancestor and his children, together with the children of his sons, and the children of his male descendants in perpetuity, while the children of his daughters, and the children of his female descendants would belong to other gentes.

Each gens had its own sachem and one or more chiefs elected from among its members. The office of sachem was hereditary in the gens, in the sense that it was filled as often as a vacancy occurred, while the office of chief was non-hereditary, because it was bestowed in reward of merit, and died with the individual. We thus distinguish two primary grades of chiefs, of which all other grades were varieties. A son could not be chosen to succeed his father, where descent was in the female line, because he belonged to a different gens, and no gens would accept a sachem or chief from any gens but its own. The office passed from brother to brother, or from uncle to nephew; but, as all male cousins were brothers under their system of consanguinity, the person chosen was not necessarily an own brother; and as all the sons of a person's female cousins were his nephews, the nephew chosen was not necessarily the son of an own sister of the deceased sachem. This rule is mentioned because the Aztec succession was precisely the same as the Iroquois; the office held by Montezuma passing from brother to brother or from uncle to nephew. Assuming the existence of Aztec gentes, with descent in the female line, the Aztec succession is perfectly intelligible.

The gens was individualized by the following rights, privileges, and obligations :—

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I. The right of electing its sachem and chiefs.
II. The right of deposing its sachem and chiefs.
III. The obligation not to marry in the gens.
IV. Mutual rights of inheritance of the property of deceased members.
V. Mutual obligations of help, defence, and redress of injuries.
VI. The right of bestowing names upon its members.
VII. The right of adopting strangers into the gens.
VIII. A common burial-place.
IX. A council of the gens.

Want of space precludes an exposition of these characteristics. All the members of the gens were free, and bound to defend each other's freedom; they were all equal in position and in personal rights, the sachem and chiefs claiming no superiority; and they were a brotherhood bound together by the ties of kin. Liberty, equality, and fraternity, though never formulated, were cardinal principles of the gens. These facts are material, because the gens was the unit of their social and governmental system, the foundation upon which Indian society was organized. A structure composed of such units would of necessity bear the impress of their character; for as the unit, so the compound. It serves to explain that sense of personal independence universally an attribute of Indian character. Such and so substantial was the character of the gens as it anciently existed among the American aborigines, and as it still exists in full vitality in many Indian tribes. Upon the gentes rested the phratry, the tribe, and the confederacy of tribes. Three thousand Senecas divided among eight gentes would give an average of three hundred and seventy-five persons to a gens.

Next in the ascending scale of organization is the phratry, consisting of a certain number of gentes reunited in a higher association for certain common objects. The Senecas were in two phratries, each consisting of four gentes, of which those in the same phratry were styled brother gentes to each other, and cousins to the other four. This organization was for social and religious rather than governmental objects. The Cayuga, Onondaga, and Tuscarora tribes had each the same number of gentes, united in the same number of phratries,

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while the Oneida and the Mohawk tribes had but three gentes each, and no phratries.

The third stage of organization is the tribe. It is composed of a number of gentes of common lineage, all the members of which speak the same dialect. The tribe held an independent territory, bore a tribal name, and possessed a government administered by a council of chiefs. Out of the gens came the chief, and out of the union of the gentes in a tribe came the council, composed of the chiefs of the gentes. It was the instrument of government, and the only one known to the American aborigines. The great body of the Indian tribes were organized in gentes, precisely like those of the Iroquois, and the phratry is still found among a number of them. Their government was purely social, dealing with persons through their relations to a gens and tribe, and perfectly simple when examined as an organization.

Fourth and last is the confederacy of tribes, which was the ultimate stage of organization, and the highest to which the aborigines attained. It was composed of tribes speaking dialects of the same stock language, the tribes having been formed by the segmentation of an original tribe. Subdivision, followed by separation in area and divergence of speech, would leave each tribe in possession of the same gentes, and with a dialect of the same language, which furnished the elements of union upon which confederacies were formed, and by means of which they were made possible. The Iroquois Confederacy consisted of five tribes, afterwards increased to six, each occupying an independent territory, and remaining under the government of its own council in whatever related to the tribe individually. They were also under the government of a general council of the confederacy in whatever related to their common interests as united tribes.

The council of sachems consisted of fifty members, taken from certain gentes of the several tribes. The offices were hereditary in these gentes, but elective among their members. When a vacancy occurred by the death of a sachem in any tribe, a council of the decedent's gens was convened to elect his successor, in which all the adult male and female members of the gens were entitled to vote. After they had made a choice it

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was still necessary that the remaining gentes should accept or reject the nomination. They met for this purpose by phratries. If either of them refused to accept the nominee, his nomination was thereby set aside, and the gens proceeded to make another choice. When the choice made by the gens had been accepted by the phratries, it was still necessary that the new sachem should be "raised up," to use their expression, and invested with his office by the council of the confederacy. Until the ceremony of investiture was performed he could not assume the duties of a sachem. Thus carefully were the rights and the independence of the people guarded in the choice of their sachems and chiefs, the latter obtaining office in much the same manner. Moreover, the gens had power to depose both sachem and chiefs, if for any reason they became unacceptable. This, in a few words, is the whole theory of the office of an Indian chief, an office found in every tribe of the American aborigines, and springing naturally from the gens.

War-chiefs were common in the Iroquois tribes, but when the confederacy was formed they experienced the necessity for a general commander of the forces of the confederacy. Two principal war-chiefs were accordingly created instead of one, both being assigned to the Seneca tribe. They were made hereditary in the Wolf and Turtle gentes, among whose members they were elected like the sachem, and were raised up in the same manner.

The same office reappears among the Aztecs, and was held by Montezuma. It is probable that it was hereditary in a particular gens, and elective among its members, like the office of principal war-chief among the Iroquois. The blazon on the house occupied by Montezuma was an eagle, which of itself creates a presumption that he belonged to the Eagle gens. An elective office implies a constituency; but what was the constituency in this case? We are told there were six electors, four Aztec, one Tezcucan, and one Tlacopan; but who made the electors? Again we are told that it was the prerogative of the incumbent of the office to appoint the six electors to name his successor. This is not the theory of an elective Indian office, and is, moreover, improbable on its face. Historians have not given an exposition of the structure of Aztec society.

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For aught that appears the people were an unorganized rabble. An emperor, with lords and nobles, judges, captains, and municipal functionaries appear, — a multitude of officers of all grades, but with no organized society behind them to whom they were responsible. How these men came into their offices, and the tenure by which they were held, is left a mystery. Montezuma appointed them; they would have us believe, because it so easily disposes of the difficulty. But they have mentioned two facts which may enable future investigators to solve the problem of Montezuma's election. It appears that the Aztecs occupied their pueblo in four divisions, precisely as the Tlascalans occupied theirs, each in a distinct quarter, called the four quarters of Mexico. It seems highly probable that these divisions were four Aztec phratries. These again are represented by Tezozomoc and Herrera as falling into subdivisions. It is equally probable that these subdivisions were so many gentes. Each of these subdivisions, as will be shown, held lands in common. When a people organized in gentes, phratries, and tribes gather in a town or city, they settle locally by gentes and tribes, — a necessary consequence of their social organization. The Grecian and Roman gentes and tribes settled in their cities in this manner. For example, the three Roman tribes were organized in gentes and curiæ (ten gentes in a curiæ, and ten curiæ in a tribe), the curia being the analogue of the phratry; and they settled locally at Rome by gentes, by curiæ, and by tribes. The Ramnes occupied the Palatine Hill, the Tities were mostly on the Quirinal, and the Luceres mostly on the Esquiline. If the Aztecs were organized in gentes and phratries, having but one tribe, they would of necessity be found in as many quarters as they had phratries, with each gens of the same phratry in the main locally by itself. The fact that the Aztec office of war-chief passed from brother to brother or from uncle to nephew is confirmed by two elections under the eyes of the Spaniards. Montezuma was succeeded by his brother Cuitlahua, and the latter was succeeded by his nephew Guatemozin. The same thing is known to have occurred in a number of previous successions. It may therefore be suggested as a probable explanation of the mode of election that the office was hereditary

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in a gens by the members of which the choice was made. Their nomination was then submitted for acceptance or rejection to the four Aztec phratries, and also to the Tezcucans and Tlacopans, who were directly interested in the selection of the confederate commander. When each had considered and confirmed the nomination, they appointed a person to express their concurrence, whence the six electors. Their function was to compare the votes of their constituents, and if they agreed to announce the result. This is submitted as a conjecture upon the fragments of evidence remaining, but it is seen to harmonize with Indian usages, and with the theory of the office of an elective Indian chief. It may also be mentioned that Montezuma was deposed for cowardice while a prisoner in the hands of Cortes, and his brother Cuitlahua put in his place. Herrera's account makes this a plain and necessary inference;* thus showing that the power which elected and deposed from office was constantly present. It also implies an organized society, and expresses the vitality of the social system.

Recurring to the Iroquois organization, it may be remarked that the gens was founded upon kin, the phratry upon the kinship of the gentes, the tribe upon dialect, and the confederacy upon stock language. It resulted in a gentile society, fundamentally different from political society, resting upon territory and upon property. It will be noticed further, that the institutions of the Iroquois were essentially democratical, — a fact that will ultimately be found true of every tribe and confederacy of the American aborigines.

Other confederacies existed beside the Iroquois; among which may be mentioned the Creek Confederacy of six tribes, the Powhattan Confederacy, of which but little is known, the Otawa Confederacy of three tribes, the Dakota League of the Seven Council Fires, the Confederacy of the Seven Moqui Pueblos in New Mexico, and the Aztec Confederacy of three tribes. Traces of the same organization are found in parts of New and Old Mexico, Central and South America.

It remains to show the prevalence of the gentile organization in America by a reference to the tribes where its exist-

* History of America, Lond. ed., 1725, Stevens Trans., l. c. i.i. 66.

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ence has been ascertained. The Wyandotes are composed of eight gentes in two phratries, the Creeks of twenty-two gentes, the Cherokees of eight, the Choctas of eight in two phratries, and the Chickasas of twelve in two phratries; the Delawares are composed of three gentes, the Munsees of three, the Mohegans of eleven in three phratries, the Abenakis of ten, the Ojibwas of twenty-three, the Potawattamies of fifteen, the Miamis of ten, the Shawnees of thirteen, the Sauks and Foxes of fourteen, the Blood Blackfeet of five, and the Piegan Blackfeet of eight; the Punkas are composed of eight gentes, the Omahas of twelve, the Iowas of eight, the Otoes and Missouris of eight, the Winnebagoes of eight, and the Mandans of seven; the Minnatares of seven, and the Crows of thirteen. The Pawnees are supposed to have six, and the Comanches six; but the fact has been but partially ascertained. On the Northwest Coast the Thlinkeets are composed of ten gentes in two phratries, and the Moqui Pueblo Indians of New Mexico of nine gentes. Mr. E. B. Tylor has traced the same organization among the Arawaks of British Guiana, and the Guaranees of Brazil.* Herrera speaks of the division of the Peruvian tribes into clans; † and mentions the fact of descent in the female line among the tribes of the Maranon.‡ He also presents certain facts which establish the existence of gentes among the Mayas of Yucatan, the most advanced Village Indians in North America.§ The "lineage," and the "kindred" so frequently mentioned in his pages as a feature of the social condition of widely separated tribes in North and South America, require the organization into gentes for their explanation. From the evidence adduced it is rendered highly probable that this organization was anciently universal in the Indian family.

A single question remains: whether the Aztecs were organized in gentes and phratries. In the first place we find three Indian tribes united in a confederacy, which gives the two upper members of the organic series. They presuppose the first and second, the gens and the phratry. In the second place we find the Aztecs in four local divisions, answering to as many phratries, and these again in subdivisions, answering

* Early History of Mankind, p. 287.
† Hist. of America, IV. 231.
‡ Ib. 377.
§ Ib. 171.

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to as many gentes. In the third place there was an Aztec council of chiefs. This presupposes as many gentes at least as there were members of this council; since no way is known of explaining the existence of an Indian chief or sachem except through a gens. And lastly, the Aztec, Tezcucan, and Tlacopan tribes, speaking dialects of the Nahuatlac language, are not distinguishable from the other tribes of American aborigines. Far from differing, they were precisely like all other tribes in the external manifestations of their organization, which was simply that of chiefs and people.

2. *The Ownership of Lands in Common.*

Among the Iroquois the public domain was owned by the tribe in common. A person who cultivated land had a possessory right to its use as long as he chose to occupy it; and upon his death it passed like his personal property to his gentile heirs. This in general was the land tenure of the Northern tribes. The Aztecs, who were one ethnical period in advance of the latter, had carried their land system one degree further. Their lands were divided into three principal parts, one of which was set off for the support of the government, one for the support of religion, and the remainder was reserved for the support of the people, in their social subdivisions. Clavigero remarks that "the lands which were called Altepetlalli, that is, those of the communities of cities and villages, were divided into as many parts as there were districts in a city, and every district possessed its own part entirely distinct from and independent of every other. These lands could not be alienated by any means whatever"; * and he adds in a footnote that the royal laws grant to every Indian village or settlement the territory which surrounds them "to the extent of six hundred Castilian cubits." The "communities of villages," each situated by itself, and owning their lands in common, suggest the gens. The Spanish grants were to the community in common, and were probably founded upon this ancient land-tenure of the aborigines. While the Iroquois held by tribes, the Aztecs held by gentes.

The land-tenure of the Peruvians was analogous. Garci-

* History of Mexico, Phila. ed., 1817, Cullen's Trans., II. 141.

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lasso de la Vega, quoting from Blas Valera, remarks that the lands were "divided into three parts, and applied to different uses. The first was for the Sun, his priests and ministers; the second was for the king, and for the support and maintenance of his governors and officers. . . . . And the third was for the natives and sojourners of the provinces, which was divided equally according to the needs which each family required.*

While these several statements may not present the exact case either in Mexico or Peru, they sufficiently indicate the ownership of land by communities of persons, probably gentes, with a system of tillage which points to large households. Neither the Aztecs nor any American Indian tribe had attained to a knowledge of the individual ownership of land in fee simple. The knowledge belongs to the period of civilization. There is not the slightest probability that any Aztec owned a foot of land which he could call his own, with power to sell and convey in fee to whomsoever he pleased.

3. *The Law of Hospitality.*

Among the Iroquois, if a man entered an Indian house in any village, it was the duty of the women of the house to set food before him. An omission to do this would have been a discourtesy amounting to an affront. If hungry, he ate; if not, courtesy required that he should taste the food and thank the giver. This would be repeated at every house he entered, and at whatever hour of the day. As a custom it was upheld by a rigorous public sentiment. Lewis and Clarke refer to the same practice among all the tribes of the Missouri. "It is the custom," they remark, "of all the nations of the Missouri to offer every white man food and refreshment when he first enters their tents." † This was simply applying to

* Royal Commentaries of Peru, Lond. ed., 1688, Rycaut. Trans., p. 154. Herrera remarks concerning their tillage and common stores as follows: "The Spaniards drawing near to Caxamalca began to have a view of the Inca's army, lying near the bottom of a mountain. . . . . They were pleased to see the beauty of the fields, most regularly cultivated, for it was an ancient law among these people that all should be fed out of common stores, and none should touch the standing corn." — *History of America*, IV. 249.

† Travels, Longman's ed., 1814, p. 649.

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their white visitors their rule of hospitality among themselves. It tended to equalize subsistence, and while any household possessed a surplus to prevent destitution in any portion of the community. This law of hospitality was universal among the Northern tribes, and it seems to have been universal in the Indian family. It was made possible by their communism in living.

In every part of America which they visited, the Spaniards, although in numbers as a military force, were assigned quarters in Indian houses emptied of their inhabitants for that purpose, and were freely supplied with provisions. Thus, at Tlascala, Cortes and his men "were generously treated, and supplied with all necessaries." * Again, "they entered Cholula, and went to a house where they lodged altogether in safety, and their Indians with them, although upon their guard, being for the present plentifully supplied with provisions." † Although, with their Indian allies, they numbered some two thousand persons, they found accommodations in a single communal or joint tenement-house of the aboriginal American model. Speaking of the Indians of Yucatan, Herrera remarks that "they are still generous and free-hearted, so that they will make everybody eat that comes into their houses, which is everywhere practised in travelling." ‡ This is a fair statement of the Iroquois law of hospitality among the Mayas. Pizarro found the same custom among the Peruvians and other tribes of the Andes. When on the coast of Tumbez, and before landing, "ten or twelve floats were immediately sent out with plenty of provisions." § When he had entered Peru, "Atahuallpa's messengers came and presented the governor with ten of their sheep from the Inca, and some other things of small value; telling him very courteously that Atahuallpa had commanded them to inquire what day he intended to be at Caxamalca, that he might have provisions on the way." ‖ These illustrations, which might be multiplied, are sufficient to show the hospitality extended to the Spaniards.

It was an active, well-established custom of Indian society, practised among themselves, and towards strangers from other

* Herrera, Hist. of Amer., II. 279. † Ib. II. 311.
‡ Ib. IV. 171. § Herrera, III. 399. ‖ Ib. IV. 244.

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tribes, and therefore naturally extended to the people who now for the first time appeared among them. Considering the numbers of the Spaniards, and another fact which the aborigines were quick to notice, namely, that a Spaniard consumed and wasted five times as much as an Indian required, their hospitality in many cases must have been grievously overtaxed.*

Attention has been called to this law of hospitality, and to its universality, for two reasons, — because it implies the existence of common stores which supplied the means for its practice, and because, wherever found, it also implies communistic living in large households. It must be evident that supplies could not have been furnished by the Iroquois, and other Northern tribes, to visitors and to strangers; much less by the Village Indians of Mexico, Central and South America, to the Spanish forces, with such uniformity, if the custom had depended in each case upon the contributions of single families. In that event it would have failed oftener than it would have succeeded. The law of hospitality, as administered by the American tribes, indicates a plan of life among them which has entirely escaped historical notice. Its explanation must be sought in the ownership and cultivation of lands in common, and in the distribution of their produce to households in which communism was practised. Common stores for large households, and possibly for the village with which to maintain its hospitality, are necessary to explain the practice. It could have been maintained on such a basis; and it is difficult to see how it could be maintained on any other.

4. *The Practice of Communism in Living.*

This, again, may be illustrated by Iroquois usages. In their villages they constructed houses, fifty, eighty, and a hundred feet in length, with a hall through the centre, a door at each end, and with the interior partitioned off at intervals of about seven feet. Each apartment or stall thus formed was open on the hall side. Such houses would each accommodate from ten to thirty families. These households were made up on the principle of kin. The married women and their children be-

* "The appetite of the Spaniards appeared to the Americans insatiably voracious, and they affirmed that the Spaniards devoured more food in a day than was sufficient for ten Americans." — *Robertson's History of America*, p. 72.

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longed to the same gens, the symbol of which was often painted upon the house, while their husbands belonged to several other gentes. It was thus made up, in the main, of gentile kindred, and presents a general picture of Indian life in all parts of America. Whatever was gained by any member of the household on hunting or fishing expeditions, or raised by cultivation, was made a common stock. Within the household they lived from common stores. After the daily meal was cooked at the several fires, the matron of the household was summoned, and it was her duty to divide the food from the kettle to the several families according to their respective needs. What remained was placed in the custody of another person until it was required by the matron.

Mr. Caleb Swan, who visited the Creek Indians in 1790, remarks that "the smallest of their towns have from twenty to forty houses, and some of the largest from a hundred and fifty to two hundred that are tolerably compact. These houses stand in clusters of four, five, six, seven, and eight together; . . . . each cluster of houses contains a clan or family, who eat and live in common." * Lewis and Clarke, speaking of the tribes of the Columbia, observe that "their large houses usually contain several families, ... among whom the provisions are common, and whose harmony is scarcely ever interrupted by disputes." † The Spanish writers do not mention the practice of communism among the Village Indians of Mexico and Central America. They are barren of practical information concerning their mode of life. A direct modern illustration of the practice among the Mayas of Yucatan is given by Mr. Stephens. At Nohacacab, a short distance east of the ruins of Uxmal, there is a settlement of Maya Indians, whose communism in living was noticed by Mr. Stephens when among them to employ laborers. He remarks that "their community consists of a hundred labradores or working-men; their lands are held in common, and the products are shared by all. Their food is prepared at one hut, and every family sends for its portion; which explains a singular spectacle we had seen on our arrival,—a procession of women and children, each

* Schoolcraft, Hist. Cond. and Pros. of Indian Tribes, V. 262.

† Travels, p. 443.

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carrying an earthen bowl containing a quantity of smoking hot broth, all coming down the same road, and disappearing among the different huts. . . . . From our ignorance of the language . . . . we could not learn all the particulars of their internal economy, but it seemed to approximate that improved state of association which is sometimes heard of among us; and as this has existed for an unknown length of time, and can no longer be considered experimental, Owen and Fourier might perhaps take lessons from them with advantage." * A hundred working-men indicate a total of five hundred persons depending for their daily food upon a single fire, the provisions being supplied from common stores, and divided from the kettle. It is probably a truthful picture of the life of their forefathers in the House of the Nuns and in the Governor's House at Uxmal at the period of European discovery. The communism of the Aztecs is illustrated by Montezuma's dinner.

5. *The Communal Character of Indian Houses.*

This important subject can only be glanced at. In an article prepared for Johnson's Cyclopædia on the "Architecture of the American Aborigines," to which reference is made, I have presented the ground-plans of the houses of the principal Indian tribes for the purpose of showing that the principle of communism in living entered into and determined their character. From the houses of the Northern Indians, each large enough for several families, to the adobe and stone houses of the Village Indians of New Mexico, each containing from fifty to five hundred apartments, and to the houses of dressed stone on elevated platforms at Uxmal, Chichen-Itza, and Palenque, all alike were joint-tenement houses. These ground-plans show that they were designed to be occupied by groups, composed, probably, of related families, whose sections were separated from each other by solid partition walls. Whenever Indian families are gathered in large households, the latter practice communism.

The houses of the Aztecs were no exception to the rule. Their size led the Spaniards to describe the largest of them as palaces, and thus they have formed a part of the staple of

* Incidents of Travel in Yucatan, II. 14.

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Aztec romance. On the march to Mexico, Cortes and his four hundred men, with some hundreds of Indian allies, found accommodations in single houses of the kind described. Thus, having "come down into the plain, they took up their quarters in a country house that had many apartments."* "At Iztapalapa he was entertained in a house that had large courts, upper and lower floors, and very delightful gardens. The walls were of stone, the timber work well wrought. There were many and spacious rooms, hung with cotton hangings extraordinary rich in their way."† The house in which Montezuma lived will be elsewhere referred to.

6. *The Custom of having but one prepared Meal each Day, — a Dinner.*

This again may be illustrated by the usages of the Iroquois, who had but one cooked meal each day. It was as much as their resources and organization for housekeeping could furnish, and was as much as they needed. It was prepared and served before the noonday hour (ten or eleven o'clock), and may be called a dinner. At this time the principal cooking for the day was done. After its division at the kettle, it was served in earthen or wooden bowls to each person. They had neither tables, nor chairs, nor plates, nor any room in the nature of a dining-room or kitchen, but ate as best suited them, the men first, and the women and children afterwards. That which remained was reserved for any member of the household when hungry. Towards evening the women cooked hominy, the maize being pounded into bits the size of a kernel of rice, which, when boiled, was put aside to be used as a lunch in the morning or at evening, and for the entertainment of visitors. They had neither a breakfast nor a supper. Each person, when hungry, ate of whatever food the house contained. This is also a fair picture of Indian life in general in America when discovered.

Although the Village Indians were one ethnical period in advance of the Iroquois, there can be little doubt that their mode of life in this respect was precisely the same. Among the Aztecs we know that a dinner was provided about midday,

* Herrera, II. 320. † Ib. II. 325.

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but have no knowledge of an Aztec breakfast or supper. One prepared meal each day was as much as their mode of life permitted, or rendered necessary. Civilization, with its diversified industries, its multiplied products, and its monogamian family, affords a breakfast and supper in addition to a dinner, but these are no older than civilization itself. Clavigero attempts to invest the Aztecs with a breakfast, but he incontinently gives up the supper. "After a few hours of labor in the morning," he observes, "they took their breakfast, which was most commonly *atolli*, a gruel of maize, and their dinner after midday; but among all the historians we can find no mention of their supper." * The "gruel of maize" spoken of as the Aztec breakfast suggests the hominy of the Iroquois, which like it was probably kept prepared as a lunch for the hungry. There is no reason for supposing that there was a prepared breakfast among the Aztecs, or any gathering of the household for a morning repast.

7. *The Custom under which the Men ate first and by themselves, and the Women and Children afterwards.*

This usage has been noticed so generally among the Indian tribes that I believe it may be said to have been universal among them. It was a consequence of the rudeness of their mode of life and of that imperfect appreciation of the female sex which appertains to their stage of advancement. Yet, from what is known of their house-life, of the production of their food, and of the management of their affairs, they were indebted for their material progress to their women, — patient, industrious, and hardy, whose virtues have never been celebrated.

Robertson states the usage as general: "They must approach their lords with reverence, they must regard them as more exalted beings, and are not permitted to eat in their presence." † The Spanish writers afford but little direct information upon this subject. Herrera remarks that "the women of Yucatan are rather larger than the Spanish, and generally have good faces, ... but they would formerly be drunk at their festivals, though they did eat apart." ‡ And Sahagun, speaking

* History of Mexico, II. 262.

† History of America, p. 78.

‡ Herrera, History of America, IV. 175.

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of the ceremony of baptism among the Aztecs, observes that "to the women, who ate apart, they did not give cacao to drink." * At the dinner of Montezuma a practical illustration is afforded of this usage, the men eating first and by themselves.

If the reader has had sufficient patience to follow the exposition, in outline, of the foregoing institutions, usages, and customs, it will enable him to understand, in a general sense, the houses of the Aztecs, and the dinner of an Aztec household, which remain to be considered.

Not a vestige of the ancient pueblo of Mexico (Tenochtitlan) remains to assist us to a knowledge of its architecture. Its structures, which were useless to a people of European habits, were speedily destroyed to make room for a city adapted to the wants of a civilized race. We must seek for its characteristics in contemporary Indian houses which still remain in ruins, and in such of the early descriptions as have come down to us, and then leave the subject with but little accurate knowledge. Its situation, partly on dry land and partly in the waters of a shallow artificial pond formed by causeways and dikes, led to the formation of streets and squares, which were unusual in Indian pueblos, and gave to it a remarkable appearance. "There were three sorts of broad and spacious streets," Herrera remarks; "one sort all water with bridges, another all earth, and a third of earth and water, there being a space to walk along on land and the rest for canoes to pass, so that most of the streets had walks on the sides and water in the middle." † Many of the houses were large, far beyond the supposable wants of a single Indian family. They were constructed of adobe brick and of stone, and plastered over in both cases with gypsum, which made them a brilliant white; and some were constructed of a red porous stone. In cutting and dressing this stone flint implements were used. ‡ The fact that the houses were plastered externally leads us to infer that they had not learned to dress stone and lay them in courses. It is not certainly established that they had learned the use of a mortar of lime and sand. In the final attack and capture, it is said that

* Historia General, Lib. IV. c. 36.
† History of Mexico, II. 361.
‡ Clavigero, II. 238.

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Cortes, in the course of seventeen days, destroyed and levelled three quarters of the pueblo, which demonstrates the flimsy character of the masonry. Some of the houses were constructed on three sides of a court, like those on the Rio Chaco in New Mexico, others probably surrounded an open court or quadrangle, like the House of the Nuns at Uxmal; but this is not clearly shown. The best houses were usually two stories high, an upper and lower floor being mentioned. The second story receded from the first, probably in the terraced form. Clavigero remarks that "the houses of the lords and people of circumstance were built of stone and lime. They consisted of two floors, having halls, large court-yards, and the chambers fitly disposed; the roofs were flat and terraced; the walls were so well whitened, polished, and shining, that they appeared to the Spaniards when at a distance to have been silver. The pavement or floor was plaster, perfectly level, plain, and smooth. . . . . The large houses of the capitol had in general two entrances, the principal one to the street, the other to the canal. They had no wooden doors to their houses." * The house was entered through doorways from the street, or from the court, on the ground-floor. Not a house in Mexico is mentioned by any of the early writers as occupied by a single family. They were evidently joint-tenement houses of the aboriginal American model, each occupied by a number of families ranging from five and ten to one hundred, and perhaps in some cases two hundred families in a house. The largest houses ever constructed in America by the Indians are still to be seen in New Mexico in ruins, one of which, the Pueblo Bonito, contained over six hundred apartments.† The village consisted of a single house constructed on three sides of a court.

Two of the houses in Mexico were more particularly noticed by the soldiers of Cortes than others,— that in which they were quartered, and that in which Montezuma lived. Neither can be said to have been described. I shall confine myself to these two structures.

Cortes made his first entry into Mexico in November, 1519,

* History of Mexico, II. 232.

† Report of Lieutenant, now General J. H. Simpson, U. S. Senate Ex. Doc. No. 54, 31st Congress, 1st Session, 1850.

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with four hundred and fifty Spaniards, according to Bernal Diaz,* accompanied by a thousand Tlascalan allies. They were lodged in a vacant palace of Montezuma's late father, Diaz naïvely remarks, observing that "the whole of this palace was very light, airy, clean, and pleasant, the entry being through a great court." † Cortes, after describing his reception, informs us that Montezuma "returned along the street in the order already described, until he reached a very large and splendid palace in which we were to be quartered. He then took me by the hand and led me into a spacious saloon, in front of which was a court through which we had entered." ‡ So much for the statements of two eyewitnesses. Herrera gathered some additional particulars. He states that "they came to a very large court, which was the wardrobe of the idols, and had been the house of Axayacatzin, Montezuma's father. . . . . Being lodged in so large a house, that, though it seems incredible, contained so many capacious rooms, with bedchambers, that one hundred and fifty Spaniards could all lie single. It was also worth observing that though the house was so big, every part of it to the last corner was very clean, neat, matted, and hung with hangings of cotton and feather work of several colors, and had beds and mats with pavilions over them. No man of whatsoever quality having any other sort of bed, no other being used." In the tidiness of these rooms we gain some evidence of the character of Aztec women.

Joint-tenement houses, and the mode of life they indicate, were at this time unknown in Europe. They belonged to a more ancient condition of society. It is not surprising, therefore, that the Spaniards, astonished at their magnitude, should have styled them palaces, and having been received with a military array by Montezuma, as the general commander of the Aztec forces, shou'd have regarded him as a king, since monarchical government was the form with which they were chiefly acquainted. Suffice it then to say that one of the great houses of the Aztecs was large enough to accommodate Cortes and his fourteen hundred and fifty men, as they had previously been

* Conquest of Mex. Ed. 1803, Keatinge's Trans., I. 181, 189. Herrera says, 300, II. 327.

† Diaz, I. 191. ‡ Despatches of Cortes, Folsom's Trans. p. 86.

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accommodated in one Cholulan house, and elsewhere on the way to Mexico. From New Mexico to the Isthmus of Panama there was scarcely a principal village in which an equal number could not have found accommodations in a single house. When it is found to be unnecessary to call it a palace in order to account for its size, we are led to the conclusion that an ordinary Aztec house was emptied of its inhabitants to make room for their unwelcome visitors. After their reception, Aztec hospitality supplied them with provisions.

We are next to consider the second so-called palace, that in which Montezuma lived, and the dinner of Montezuma which these soldiers witnessed, and which has gone into history as a part of the evidence that a monarchy of the feudal type existed in Mexico. They had but little time to make their observations, for this imaginary kingdom perished almost immediately, and the people in the main dispersed.

On the seventh day after the entry into Mexico, Montezuma was induced by intimidation to leave the house in which he lived and take up his quarters with Cortes, where he was held a prisoner until his death, which occurred a few weeks later.* Whatever was seen of his mode of life in his usual place of residence was practically limited to the five days between the coming of the Spaniards and his capture. Our knowledge of the facts is in the main derived from what these soldiers reported upon slight and imperfect means of observation. Bernal Diaz and Cortes have left us an extraordinary description, not of his residence, but of his daily life, and more particularly of the dinner which has been made the subject of this article. It is worth the attempt to take up the pictures of these and succeeding authors, and see whether the real truth of the matter cannot be elicited from their own statements. There was undoubtedly a basis of facts underneath them, because without such a basis the superstructure could not have been created.

It may with reason be supposed that the Spaniards found Montezuma, with his gentile kindred, in a large joint-tenement house, containing a hundred or more families united in a communal household. The dinner they witnessed was the single daily meal of this household, prepared in a common cook-

* Clavigero's History of Mexico, II. 364.

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house from common stores, and divided at the kettle. The dinner of each person was placed in an earthen bowl, with which in his hand an Indian needed neither chair nor table, and, moreover, had neither the one nor the other. The men ate first, and by themselves, Indian fashion; and the women, of whom only a few were seen, afterwards and by themselves. On this hypothesis the dinner in question is susceptible of a satisfactory explanation.

It has been shown that each Aztec community of persons owned lands in common, from which they derived their support. Their mode of tillage and of distribution of the products, whatever it may have been, would have returned to each family or household, large or small, its rightful share. Communism in living in large households composed of related families springs naturally from such a soil. It may be considered a law of their condition, and, plainly enough, the most economical mode of life they could adopt until the idea of property had been sufficiently developed in their minds to lead to the division of lands among individuals with ownership in fee, and power of alienation. Their social system, which tended to unite kindred families in a common household, their ownership of lands in common, and their ownership as a group, of a joint-tenement house, which would necessarily follow, would not admit a right in persons to sell, and thus to introduce strangers into the ownership of such lands or such houses. Lands and houses were owned and held under a common system which entered into their plan of life. The idea of property was forming in their minds, but it was still in that immature state which pertains to the Middle status of barbarism. They had no money, but traded by barter of commodities; very little personal property, and scarcely anything of value to Europeans. They were still a breech-cloth people, wearing this rag of barbarism as the unmistakable evidence of their condition; and the family was in the syndyasmian or pairing form, with separation at any moment at the option of either party. It was the weakness of the family, its inability to face alone the struggle of life, which led to the construction of joint-tenement houses throughout North and South America by the Indian tribes; and it was the gentile organization which

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led them to fill these houses, on the principle of kin, with related families.

In a pueblo as large as that of Mexico, which was the largest found in America, and may possibly have contained thirty thousand inhabitants, there must have been a number of large communal houses of different sizes, from those that were called palaces because of their size, to those filled by a few families. Degrees of prosperity are shown in barbarous as well as in civilized life in the quarters of the people. Herrera states that the houses of the poorer sort of people were "small, low, and mean," but that "as small as the houses were, they commonly contained two, four, and six families." * Wherever a household is found in Indian life, be the married pairs composing it few or many, that household practised communism in living. In the largest of these houses it would not follow necessarily that all its inmates lived from common stores, because they might form several household groups in the same house; but in the large household of which Montezuma was a member, it is plain that it was fed from common stores prepared in a common cook-house, and divided from the kettle in earthen bowls, each containing the dinner of a single person. Montezuma was supposed to be absolute master of Mexico, and what they saw at this dinner was interpreted with exclusive reference to him as the central figure. The result is remarkably grotesque. It was their own self-deception, without any assistance from the Aztecs. The accounts given by Diaz and Cortes, and which subsequent writers have built upon with glowing enthusiasm and free additions, is simply the gossip of a camp of soldiers suddenly cast into an earlier form of society, which the Village Indians of America, of all mankind, then best represented. That they could understand it was not to have been expected. Accustomed to monarchy and to privileged classes, the principal Aztec war-chief seemed to them quite naturally a king, and sachems and chiefs followed in their vision as princes and lords. But that they should have remained in history as such for three centuries is an amusing commentary upon the value of historical writings in general.

The so-called palace of Montezuma is not described by Diaz,

* History of America, II. 360.

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for the reason, probably, that there was nothing to distinguish it from a number of similar structures in the pueblo. Neither is it described by Cortes or the Anonymous Conqueror; Cortes merely remarking generally that "within the city his palaces were so wonderful that it is hardly possible to describe their beauty and extent; I can only say that in Spain there is nothing equal to them." * Gothic cathedrals were then standing in Spain, the Alhambra in Grenada, and without doubt public and private buildings of dressed stone laid in courses. While the comparison was mendacious, we can understand the desire of the conqueror to magnify his exploits. Herrera, who came later and had additional resources, remarks that the palace in which Montezuma resided "had twenty gates, all of them to the square or market-place, and the principal streets, and three spacious courts, and in one of them a very large fountain. . . . . There were many halls one hundred feet in length, and rooms of twenty-five and thirty, and one hundred baths. The timber work was small, without nails, but very fine and strong, which the Spaniards much admired. The walls were of marble, jasper, porphyry, a black sort of stone with red veins like blood, white stone, and another sort that is transparent. The roofs were of wood, well wrought and carved. . . . . The rooms were painted and matted, and many of them had rich hangings of cotton and coney wool, or of feather-work. The beds were not answerable to the grandeur of the house and furniture, being poor and wretched, consisting of blankets upon mats or on hay. . . . . Few men lie in this palace, but there were one thousand women in it, and some say three thousand, which is reckoned most likely. . . . . Montezuma took to himself the ladies that were the daughters of great men, being many in number." †

The external walls of the houses were covered with plaster. From the description it seems probable that in the interior of the large rooms the faces of the stone in the walls were seen here and there, some of the red porous stone, some of marble, and some resembling porphyry, for it is not supposable that they could cut this stone with flint implements. Large stones used on the inner faces of the walls might have been

* Despatches, p. 121. † History of America, II. 345.

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left uncovered, and thus have presented the mottled appearance mentioned. The Aztecs had no structures comparable with those of Yucatan. Their architecture resembles that of New Mexico wherever its features distinctly appear upon evidence that can be trusted. The best rooms found in the latter region are of thin pieces of sandstone prepared by fracture, and laid up with a uniform face, without the use of mortar. Herrera had no occasion to speak of the use of marble and porphyry in the walls of this house in such a vague manner and upon more vague information. The reference to the thousand or more women as forming the harem of Montezuma is a gross libel.

Mr. Hubert H. Bancroft, the last of the long line of writers who have treated the affairs of the Aztecs, has put the finishing touch to this picture in the following language: "The principal palace of the king of Mexico was an irregular pile of low buildings enormous in extent, constructed of huge blocks of *tetzontli*, a kind of porous stone common to that country, cemented with mortar. The arrangement of the buildings was such that they enclosed three great plazas or public squares, in one of which a beautiful fountain incessantly played. Twenty great doors opened on the squares and on the streets, and over these was sculptured in stone the coat-of-arms of the king of Mexico, an eagle griping in his talons a jaguar. In the interior were many halls, and one in particular is said by a writer who accompanied Cortes, known as the Anonymous Conqueror, to have been of sufficient extent to contain three thousand men. . . . . In addition to these were more than one hundred smaller rooms, and the same number of marble baths. . . . . The walls and floors of halls and apartments were many of them faced with polished slabs of marble, jasper, obsidian, and white *tecali;* lofty columns of the same fine stones supported marble balconies and porticos, every inch and corner of which was filled with wondrous ornamental carving, or held a grinning, grotesquely sculptured head. The beams and casings were of cedar, cypress, and other valuable woods profusely carved and put together without nails. . . . . Superb mats of most exquisite finish were spread upon the marble floors; the tapestry that draped the walls and the curtains that hung be-

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fore the windows were made of a fabric most wonderful for its delicate texture, elegant designs, and brilliant colors; through the halls and corridors a thousand golden censers, in which burned precious spices and perfumes, diffused a subtle odor."*

Upon this rhapsody it will be sufficient to remark that halls were entirely unknown in Indian architecture. Neither a hall, as that term is used by us, has ever been seen in an Indian house, nor has one been found in the ruins of any Indian structure. An external corridor has occasionally been found in ruins of houses in Central America. Aztec window-curtains of delicate texture, marble baths and porticos, and floors of polished slabs of marble, as figments of a troubled imagination, recall the glowing description of the great kingdom of the Sandwich Islands, with its king, its cabinet ministers, its parliament, its army and navy, which Mark Twain has fitly characterized as "an attempt to navigate a sardine dish with Great Eastern machinery"; and it suggests also the Indian chief humorously mentioned by Irving as generously "decked out in cocked hat and military coat, in contrast with his breech clout and leathern leggins, being grand officer at top and ragged Indian at bottom."† Whatever may be said by credulous and enthusiastic authors to decorate this Indian pueblo, its houses, and its breech-cloth people, cannot conceal the "ragged Indian" therein by dressing him in a European costume.

The dinner of Montezuma, witnessed within the five days named by the Spanish soldiers, comes down to us with a slender proportion of reliable facts. The accounts of Bernal Diaz and of Cortes form the basis of all subsequent descriptions.‡ Montezuma was the central figure around whom all the others are made to move. A number of men, as Diaz states, were to be seen in the house and in the courts, going to and fro, a part of whom were thought to be chiefs in attendance upon Montezuma, and the remainder were supposed to be guards. Better proof of the use of guards is needed than the suggestion of Diaz. It implies a knowledge of military discipline unknown by Indian tribes. It was noticed that Indians went barefooted into the presence of Montezuma, which was interpreted as an

* Nat ve Ra es of the Pacific States. Civilized Nations, Vol II. p. 160.

† Bonneville, p. 34. ‡ The Anonymous Conqueror does not notice it.

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act of servility and deference, although bare feet must have been the rule rather than the exception in Tenochtitlan. Diaz further informs us that "his cooks had upwards of thirty different ways of dressing meats, and they had earthen vessels so contrived as to keep them always hot. For the table of Montezuma himself above three hundred dishes were dressed, and for his guards above a thousand. Before dinner Montezuma would go out and inspect the preparations, and his officers would point out to him which were the best, and explain of what birds and flesh they were composed; and of these he would eat. . . . . Montezuma was seated on a low throne or chair at a table proportionate to the height of his seat. The table was covered with white cloth and napkins, and four beautiful women presented him with water for his hands in vessels which they called Xicales, with other vessels under them like plates to catch the water; they also presented him with towels. Then two other women brought him small cakes of bread, and when the king began to eat, a large screen of wood-gilt was placed before him, so that people should not during that time see him. The women having retired to a little distance, four ancient lords stood by the throne, to whom Montezuma from time to time spoke or addressed questions, and as a matter of particular favor gave to each of them a plate of that which he was eating. . . . . This was served on earthenware of Cholula, red and black. . . . . I observed a number of jars, about fifty, brought in filled with foaming chocolate, of which he took some which the women presented to him. During the time Montezuma was at dinner, two very beautiful women were busily employed making small cakes, with eggs and other things mixed therein. These were delicately white, and when made they presented them to him on plates covered with napkins. Also another kind of bread was brought to him in long loaves, and plates of cakes resembling wafers. After he had dined they presented to him three little canes, highly ornamented, containing liquid amber mixed with an herb they call tobacco; and when he had sufficiently viewed the singers, dancers, and buffoons, he took a little of the smoke of one of these canes and then laid himself down to sleep; and thus his principal meal concluded. After this was over, all his guards

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and domestics sat down to dinner, and as near as I can judge, above a thousand plates of these eatables that I have mentioned were laid before them, with vessels of foaming chocolate, and fruit in immense quantity. For his women and various inferior servants, his establishment was a prodigious expense, and we were astonished, amid such a profusion, at the vast regularity that prevailed."* Diaz wrote his history more than thirty years after the conquest (he says he was writing it in 1568),† which may serve to excuse him for implying the use of veritable chairs and a table where neither existed, and for describing the remainder as sitting down to dinner. Tezozomoc, who is followed by Herrera, says the table of Montezuma consisted of two skins. How they were fastened together and supported does not appear.

The statements in the Despatches of Cortes, as they now appear, are an improvement upon Diaz, the pitch being on a higher key. He remarks that Montezuma "was served in the following manner: Every day, as soon as it was light, six hundred nobles and men of rank were in attendance at the palace, who either sat or walked about in the halls and galleries, and passed their time in conversation, but without entering the apartment where his person was. The servants and attendants of these nobles remained in the court-yards, of which there were two or three of great extent, and in the adjoining street, which was also very spacious. They all remained in attendance from morning till night; and when his meals were served, the nobles were likewise served with equal profusion, and their servants and secretaries also had their allowance. Daily his larder and wine-cellar were open to all who wished to eat or drink. The meals were served by three or four hundred youths, who brought in an infinite number of dishes; indeed, whenever he dined or supped the table was loaded with every kind of flesh, fish, fruits and vegetables that the country produced. As the climate is cold, they put a chafing-dish with live coals under every plate and dish, to keep them warm. The meals were served in a large hall in which Montezuma was accustomed to eat, and the dishes quite filled

* History of the Conquest of Mexico, I. 198-202. † Ib. II. 423.

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the room, which was covered with mats, and kept very clean. He sat on a small cushion, curiously wrought of leather. During the meal there were present, at a little distance from him, five or six elderly caciques, to whom he presented some of the food. And there was constantly in attendance one of the servants, who arranged and handed the dishes, and who received from others whatever was wanted for the supply of the table. Both at the beginning and end of every meal, they furnished water for the hands; and the napkins used on these occasions were never used a second time, and this was the case also with the plates and dishes, which were not brought again, but new ones in place of them; it was the same with the chafing-dishes." *

Since cursive writing was unknown among the Aztecs, the presence of these secretaries is an amusing feature in the account. The wine-cellar also is remarkable for two reasons: because the level of the streets and courts was but four feet above the level of the water, which made cellars impossible; and because the Aztecs had no knowledge of wine. An acid beer (pulque), made by fermenting the juice of the maguey, was a common beverage of the Aztecs; but it is hardly supposable that even this was used at dinner. It will be noticed that according to this account the dinner was served to all at the same time; Montezuma and several chiefs eating at one end of the room, but no mention is made of the manner in which the remainder ate. The six hundred men (or less) who remained about the house and courts during the day, we may well suppose, were, with their families, joint residents and joint proprietors with Montezuma of the establishment. Two or three structures are mingled in these descriptions, which were probably entirely distinct in their occupations and uses.

Herrera gathered up the subsequent growth of the story, which undoubtedly made a great sensation in Europe as a part of the picture of life in the New World; and embellished it from sheer delight in a marvellous tale. The few facts stated by Bernal Diaz, expressing the interpretation of the Spanish soldiers, were fruitful seeds planted three hundred years ago, which the imaginations of enthusiastic authors have developed

* Despatches of Cortes, pp. 123.

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into a glowing and picturesque narrative. The principal part of Herrera's account runs as follows: "Montezuma did always eat alone, and so great a quantity of meat was served up to his table, such great variety, and so richly dressed, that there was sufficient for all the prime men of his household. His table was a cushion, or two pieces of colored leather; instead of a chair, a little low stool, made of one piece, the seat hollowed out, carved and painted in the best manner that could be; the table-cloth, napkins, and towels of very fine cotton as white as snow, and never served any more than once, being the fees of the proper officers. The meat was brought in by four hundred pages, all gentlemen, sons of lords, and set down together in a hall; the king went thither, and with a rod, or his hand, pointed to what he liked, and then the sewer set it upon the chafing-dishes that it might not be cold; and this he never failed to do, unless the stewards at any time very much recommended to him some particular dishes. Before he sat down, twenty of the most beautiful women came and brought him water to wash his hands, and when seated the sewer did shut a wooded rail that divided the room, lest the nobility that went to see him dine should encumber the table, and he alone set on and took off the dishes, for the pages neither came near nor spoke a word. Strict silence was observed, none daring to speak unless it was some jester, or the person of whom he asked a question. The sewer was always upon his knees and barefooted, attending him without lifting up his eyes. No man with shoes on was to come into the room upon pain of death. The sewer also gave him drink in a cup of several shapes, sometimes of gold, and sometimes of silver, sometimes of gourd, and sometimes of the shells of fishes.* Six ancient lords attended at a distance, to whom he gave some dishes of what he liked best, which they did eat there with much respect. He had always music of flutes, reeds, horns, shells, kettle-drums, and other instruments, nothing agreeable to the ears of Spaniards. . . . . There were

* Solis, thinking a cocoanut shell altogether too plain, embellishes the shell with jewels: "He had cups of gold, and salvers of the same; and sometimes he drank out of cocoas and natural shells very richly set with jewels." — *History of the Conquest of Mexico*, Lond., ed. 1738, Townshend's Trans., I. 417.

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always at dinner dwarfs, crooked and other deformed persons, to provoke laughter, and they did eat of what was left at the further end of the hall, with the jesters and buffoons. What remained was given to three thousand Indians, that were constantly upon guard in the courts and squares, and therefore there were always three thousand dishes of meat and as many cups of liquor; the larder and cellar were never shut, by reason of their continual carrying in and out. In the kitchen they dressed all sorts of meat that were sold in the market, being a prodigious quantity, besides what was brought in by hunters, tenants, and tributaries. The dishes and all utensils were all of good earthenware, and served the king but once. He had abundance of vessels of gold and silver, yet made no use of them, because they should not serve twice." *

Further on, and out of its place, Herrera gives us what seems to have been a call of the scattered household to dinner. "When it was dinner-time," he remarks, "eight or ten men whistled very loud, beating the kettle-drums hard, as it were to warn those that were to dance after dinner; then the dancers came, who, to entertain their great sovereign, were all to be men of quality, clad as richly as they could, with costly mantles, white, red, green, yellow, and some of several colors." †

The four women of Diaz who brought water to Montezuma have now increased to twenty; but, as the Spanish writers claimed a wide latitude in the matter of numbers, fivefold is not, perhaps, unreasonable, especially as it did not occur to Herrera that Diaz may, at the outset, have quadrupled the actual number. The "three or four hundred youths" who brought in the dinner, according to Cortes, settle down under Herrera to "four hundred pages, all gentlemen, sons of lords"; and here we must recognize the discrimination of the historian, in that he found the highest number stated by Cortes fully adequate to the occasion. Two other things may be noticed: shoes have disappeared from all Indian feet in the face of a terrific penalty; and three thousand hungry Indians stand in peaceful quietude, while their dinner grows cold upon the floor, as Montezuma eats alone in solitary grandeur. No American Indian could be

* History of America, II. 336.
† Ib. 443.

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made to comprehend this picture. It lacks the realism of Indian life, and embodies an amount of puerility of which the Indian nature is not susceptible. Europeans and Americans may rise to the height of the occasion because their mental range is wider, and their imaginations have fed more deeply upon nursery-tales. Diaz had contented himself with saying that Montezuma "had two hundred of his nobility on guard in apartments adjoining his own,"* in whom may be recognized his fellow-householders; but Cortes generously increased the number to "six hundred nobles and men of rank," who appeared at daylight and remained in attendance during the day. Neither number, however, was quite sufficient to meet the conceptions of the historiographer of Spain, and accordingly three thousand, all guards, were adopted by Herrera as a suitable number to give *éclat* to Montezuma's dinner. Diaz, however, states that "a thousand plates of those eatables" were set before the guards and domestics. If any man, conversant with Indian character, could show by what instrumentality five hundred Indians could be kept together twelve hours in attendance upon any human being, from a sense of duty, he would add something to our knowledge of the Red Race; and could he prove further that they had actually waited, in the presence of as many earthen bowls, smoking with their several dinners, while their war-chief in the same room was making his repast alone, the verifier would thereby endow the Indian character with an element of forbearance he has never since been known to display. The block of wood hollowed out for a stool or seat may be accepted, for it savors of the simplicity of Indian art. That the Aztecs had napkins of coarse texture, woven by hand, is probable; as also that they were white, because cotton is white. Imagination might easily expand a napkin into a table-cloth, provided a table existed to spread it upon; but in this case, without duly considering the relation between the two, the table-cloth has been created, but the table refuses to appear. The napkin business, therefore, seems to have been slightly overdone. Finally, the call of the scattered household to dinner by kettle-drums and whistling savors too strongly of Indian ways and usages to be diverted into a summons to the dancers, as Herrera suggests. This Aztec dinner-

* History of the Conquest of Mexico, I. 198.

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call, on a scale commensurate with a large communal household, would have been lost to history but for the special use discerned in it to decorate a tale. It recognizes the loitering habits of an Aztec household, and perhaps the irregularity of the dinner-hour.

Passing over the descriptions of Sahagun, Clavigero, and Prescott, who have kindled into enthusiasm over this dinner of Montezuma, Mr. Hubert H. Bancroft shall be allowed to furnish us with the very latest version. "Every day," he remarks, "from sunrise until sunset the antechambers of Montezuma's palace in Mexico were occupied by six hundred noblemen and gentlemen, who passed their time lounging about and discussing the gossip of the day in low tones, for it was considered disrespectful to speak loudly or make any noise within the palace limits. They were provided with apartments in the palace, and took their meals from what remained of the superabundance of the royal table, as did after them their own servants, of whom each person of quality was entitled to from one to thirty according to his rank. These retainers, numbering two or three thousand, filled several outer courts during the day. The king took his meals alone in one of the largest halls of the palace. . . . . He was seated upon a low leather cushion, upon which were thrown various soft skins, and his table was of a similar description, except that it was larger and rather higher, and was covered with white cotton cloths of the finest texture. The dinner-service was of the finest ware of Cholula, and many of the goblets were of gold and silver, or fashioned with beautiful shells. He is said to have possessed a complete service of solid gold, but as it was considered below a king's dignity to use anything at table twice, Montezuma, with all his extravagance, was obliged to keep this costly dinner-set in the temple. The bill of fare comprised everything edible of fish, flesh, and fowl, that could be procured in the empire or imported beyond it. Relays of couriers were employed in bringing delicacies from afar. . . . . There were cunning cooks among the Aztecs, and at these extravagant meals there was almost as much variety in the cookery as in the matter cooked. Sahagun gives a most formidable list of roast, stewed, and broiled dishes, of meat, fish, and poultry, seasoned with many kinds of herbs, of which,

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however, that most frequently mentioned is chile. He further describes many kinds of bread, all bearing a more or less close resemblance to the Mexican tortilla, ... then tamales of all kinds, and many other curious messes, such as frog spawn and stewed ants, cooked with chile. . . . . Each dish was kept warm on a chafing-dish placed under it. Writers do not agree as to the exact quantity of food served up at each meal, but it must have been immense, since the lowest number of dishes given is three hundred, and the highest three thousand. They were brought into the hall by four hundred pages of noble birth, who placed their burdens upon the matted floor and retired noiselessly. The king then pointed out such viands as he wished to partake of, or left the selection to his steward, who doubtless took pains to study the likes and dislikes of the royal palate. The steward was a functionary of the highest rank and importance; he alone was privileged to place the designated delicacies before the king upon the table; he appears to have done duty both as royal carver and cup-bearer;* and, according to Torquemada, to have done it barefooted and on his knees. Everything being in readiness, a number of the most beautiful of the king's women entered, bearing water in round vessels called Xicales, for the king to wash his hands in, and towels that he might dry them, other vessels being placed upon the ground to catch the drippings. Two other women, at the same time, brought him some small loaves of a very delicate kind of bread, made of the finest maize flour, beaten up with eggs. This done, a wooden screen, carved and gilt, was placed before him that no one might see him while eating. There were always present five or six aged lords, who stood near the royal chair barefooted and with bowed heads. To these, as a special mark of favor, the king occasionally sent a choice morsel from his own plate. During the meal the monarch amused himself by watching the performances of his jugglers and tumblers, whose marvellous feats of strength and dexterity I shall describe in another place; at other times there was dancing accompanied by singing and music. . . . . The more solid food was followed by pastry, sweetmeats, and a magnificent dessert of fruit. The only beverage drank was chocolate, of which about fifty jars

* The "cup-bearer" agrees reasonably well with the "window-curtains."

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were provided; it was taken with a spoon, finely wrought of gold or shell, from a goblet of the same material. Having finished his dinner, the king again washed his hands in water brought to him, as before, by the women. After this, several painted and gilt pipes were brought, from which he inhaled, through his mouth or nose, as best suited him, the smoke of a mixture of liquid amber and an herb called tobacco. This siesta over, he devoted himself to business, and proceeded to give audience to foreign ambassadors or deputations from cities in the empire, and to such of his lords and ministers as had business to transact with him." *

In this account, although founded upon those of Diaz and Cortes, and showing nothing essentially new, we have the final growth of the story to the present time, but without any assurance that the limits of its possible expansion have been reached. The purification of our aboriginal history, by casting out the mass of trash with which it is so deeply freighted, is forced upon us to save American intelligence from deserved disgrace. Whatever may be said of the American aborigines in general, or of the Aztecs in particular, they were endowed with common sense in the matter of their daily food, which cost them labor, forethought, and care to provide. The picture of Indian life here presented is simply impossible. Village Indians in the Middle status of barbarism were below the age of tables and chairs for dinner service; neither had they learned to arrange a dinner to be eaten socially at a common table, or even to share their dinner with their wives and children. Their joint-tenement houses, their common stores, their communism in living, and the separation of the sexes at their meals, are genuine Indian customs and usages which explain this dinner. It was misconceived by the Spaniards quite naturally, and with the grotesque results herein presented; but there is no excuse for continuing this misconception in the presence of known facts accessible to all.

There is no doubt whatever that Montezuma was treated with great consideration by all classes of persons. Indians respect and venerate their chiefs. As their principal war-chief Montezuma held the highest official position among them. He

* Native Races of the Pacific States, II, 174 – 178.

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is represented as amiable, generous, and manly, although unnerved by the sudden appearance and novel and deadly arms of the Spaniards. He had charge of the reception and entertainment of Cortes and his men, who requited him savagely for his hospitality and kindness. But when his home-life is considered, he fared no better than his fellow-householders, sharing with them their common dinner. These accounts, when divested of their misconceptions, render it probable that Montezuma was living with his gentile kinsmen in a house they owned in common; and that what the Spaniards saw was a dinner in common by this household which, with the women and children, may have numbered from five hundred to a thousand persons. When the scattered members of the household had been summoned, the single daily meal was brought in by a number of persons from the common cook-house in earthen bowls and dishes, and set down upon the floor of an apartment used as a place for dinner in the fashion of Indians. Indians as they were, they doubtless took up these bowls one by one, each containing the dinner of one person divided at the kettle. They ate standing, or it may be sitting upon the floor, or upon the ground in the open court. Indians as they were, the men ate first and by themselves, and the women and children afterwards. After dinner was over, they were diverted, probably, with music and dancing, and made themselves merry, as well-fed Indians are apt to do. That the same dinner, conducted in a similar manner, occurred at all the houses in the pueblo, large and small, once a day, there can scarcely be a doubt.

The dinner of Montezuma which has gone into history, and been read for three centuries with wonder and admiration, is an excellent illustration of the slender material out of which American aboriginal history has been made. It shows, moreover, as a warning, what results flow from great misconceptions through the constructive faculty of authors.

A confederacy of three Indian tribes, speaking dialects of the same language, was precisely what the Spaniards found in Mexico, and this was all they found. They had no occasion in their accounts to advance a step beyond this simple fact. A satisfactory explanation of this confederacy can be found in

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similar Indian confederacies. It was a growth from the common institutions of the Indian family. Underneath these delusive pictures a council of chiefs is revealed, which was the natural and legitimate instrument of government under Indian institutions. No other form of government was possible among them. They had, beside, which was an equally legitimate part of this system, an elective and deposable war-chief (Teuchtli), the power to elect and to depose being held by a fixed constituency ever present, and ready to act when occasion required. The Aztec organization stood plainly before the Spaniards as a confederacy of Indian tribes. Nothing but the grossest perversion of obvious facts could have enabled Spanish writers to fabricate the Aztec monarchy out of a democratic organization.

Without ascertaining the unit of their social system, if organized in gentes, as they probably were, and without gaining any knowledge of the organization that did exist, they boldly invented for the Aztecs a monarchy, with high feudal characteristics, out of the reception of Cortes by their principal war-chief, and such other flimsy materials as Montezuma's dinner. This misconception has stood, through American indolence, quite as long as it deserves to stand.

When we have learned to speak of the American Indians in language adapted to Indian life and Indian institutions, they will become comprehensible. So long as we apply to their social organizations and domestic institutions terms adapted to the organizations and to the institutions of civilized society, we caricature the Indians and deceive ourselves. There was neither a political society, nor a state, nor any civilization in America when it was discovered; and, excluding the Eskimos, but one race of Indians, the Red Race.

LEWIS H. MORGAN.

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Art. III. — The Consular System of the United States.

For more than sixty years after the organization of the government of the United States, the consular system received very little attention from Congress. Acts were early passed defining the duties of consuls and granting them the necessary powers for the transaction of their business. The appointment of consuls was left to the discretion of the President, unguided and unhampered by legislation, under the general power conferred by the Constitution on him "by and with the advice and consent of the Senate" to "appoint ambassadors, other public ministers and consuls." The only consuls for the payment of salaries to whom provision was made by law during the first thirty or forty years of the Republic, were those in the Barbary States, on the north coast of Africa, and this provision was made for reasons connected with our political relations with those piratical powers. Such other consuls as the President saw fit, with the advice and consent of the Senate, to appoint, to reside at whatever place in the world was expressed in the commission, received no salaries, and were paid, if paid at all, for their own services, by commissions or fees, although some small allowances from the treasury were made for expenses. Long after the establishment of salaries for consuls in the Barbary States, provision was made by law for the payment of a moderate salary to the consul at London, and this officer was for a long series of years the only salaried consul of the United States resident in any wholly civilized country. Under this system, it is impossible to deny that there were many consuls, foreign subjects as well as native citizens, who gave excellent service to the United States without compensation. But it is equally true that, especially during the latter part of the period of which we are speaking, to wit, the first sixty years of the government under the Constitution, the meagreness of the emolument at the vast majority of posts caused the office of consul to fall in many instances into the hands of unworthy persons. Meanwhile there grew to be a few places where the consular fees amounted to a large sum, and these of course were the chosen

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berths of Presidential favorites; not always so worthily bestowed as when President Pierce, in 1853, appointed Nathaniel Hawthorne to be consul at Liverpool, where the fees, then belonging to the consul, were believed to amount to at least $20,000 annually. The fees returned to the treasury by the consul at that port in 1873 were $37,530.

As lately as that same year 1853, according to the report then made by the fifth auditor of the treasury, who is charged with the oversight of consular accounts, there were but ten posts where consuls of the United States received salaries, namely, London; the three posts in the Barbary States; that at Alexandria in Egypt (then recently established); two others at Beirut and Smyrna, in the Turkish dominions; and three in China. There were two hundred and fourteen other consuls and commercial agents in the different quarters of the world without salaries, making two hundred and twenty-four persons in the service.

It was not until 1855 that Congress made an attempt to reduce the consular service to a somewhat symmetrical system. A comprehensive act was passed that year, which, however, it was found necessary to repeal, revise, and re-enact in a modified form the next year. It was the aim of this measure, both before and after the revision, to provide fixed salaries for the consuls at all important posts, and to require the return to the treasury of the fees collected at such places. Only the consuls at places where the fees were inconsiderable were to be compensated by the fees. This revised act of 18th August, 1856, has been the basis of the system for the last nineteen years. But gross anomalies, as might have been anticipated, grew up under it. In process of time (partly owing to changes in the laws which will presently be explained) large amounts of fees were collected at places where the amount had formerly been inconsiderable. Instead of promptly withdrawing these places from the schedule of consulates compensated by fees, Congress strove to cope with the difficulty by enactments limiting the amount of fees to be retained by any consul. Meanwhile the authorized allowances for expenses that were obviously necessary were excessively meagre; so that an honest administration of the service was beset with difficulties.

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Within the last few years, however, under a more watchful supervision by the State Department of the working of the consular service, several important improvements in the system have been brought about by the legislation of Congress, culminating in the year 1874, and the occasion is favorable for a general survey of the establishment, as provided for by existing laws. We are the more inclined to this duty, because at the present session of Congress, the House of Representatives, in the debates upon the bill providing for the diplomatic and consular service for the next financial year (beginning July 1, 1876), and in the passage of the bill in that branch with reduced appropriations under several heads, has manifested a disposition to cancel and undo some of the good work which had been effected by the legislation of the preceding two or three years. The reader will understand that we are confining ourselves to the *consular* as distinguished from the *diplomatic* service. We make this distinction, because the two services are essentially different. They are alike in the circumstances that both require the employment of public officers in foreign countries, and both relate to the protection of the interests of the nation and its citizens abroad; but in other respects they have little in common. The attack in the House of Representatives last February was more vigorous upon the diplomatic salaries and appropriations than on those attached to the consular service. The latter, nevertheless, were not spared; although, as the figures we shall adduce will show, the basis on which the system had been established by previous legislation yields a handsome surplus of fees collected by consuls, and by them actually paid into the treasury, over and above its whole cost to the government.

The consular system of the United States as thus established contemplates the employment at fixed salaries, for the payment of which provision is made in the annual appropriation acts passed by Congress, of seventeen consuls-general and one hundred and sixty-eight consuls. In this enumeration are included among the consuls-general the officer in Egypt, whose official title is "agent and consul-general," and the officer at Constantinople, who is "secretary of legation and consul-general," but not the officers in Hayti and Liberia, each

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of whom bears the official title of "minister-resident and consul-general," and who are considered as belonging to the diplomatic service. The schedule of consuls includes some places where the actual title of the officer is "commercial agent." The duties of a commercial agent are precisely the same as those of a consul, the only difference in the office being this, that a consul requires, besides the appointment from his own government, an *exequatur* or instrument acknowledging his official position from the government to which he is accredited, while a commercial agent requires no exequatur. The law as it now stands in the Revised Statutes, derived from the act of 1856 (the act of 1855 having been conspicuously imperfect in this respect), is careful, in express terms, not to attempt to fix the grade of the officer whom the President may appoint at any place. Congress holds the purse-strings and makes the appropriations for the salaries; but if the President sees fit to appoint a consul in lieu of a commercial agent at any place, or *vice versa*, or a consul-general instead of a consul or commercial agent, the salary attached to the post is available for the compensation of the officer thus appointed. The President, moreover, with the advice and consent of the Senate, may appoint a consul-general or consul to serve without a salary at any other place.

The schedule of salaries established by law for consuls-general and consuls, but applying as we have said also to six commercial agents, is the following: —

SCHEDULE OF CONSULAR SALARIES ESTABLISHED BY THE ACT OF CONGRESS OF JUNE 11, 1874.

Consuls-General.

4	(London, Paris, Havana, and Rio Janeiro),	at	$ 6,000	$ 24,000
2	(Calcutta and Shanghai), ...	"	5,000	10,000
1	(Melbourne), ...	"	4,500	4,500
3	(Berlin, Kanagawa, and Montreal), . .	"	4,000	12,000
1	(agent and consul-general at Cairo, Egypt),	"	4,000	4,000
4	(Constantinople, Frankfort, Rome and Vienna),	"	3,000	12,000
2	(Mexico and St. Petersburg), . . .	"	2,000	4,000
17				$ 70,500

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	Consuls.			
1	(Liverpool), ...	at	$ 6,000	$ 6,000
2	called consulates of the first class, .	"	4,000	8,000
9	called consulates of the second class, .	"	3,500	31,500
17	called consulates of the third class (including one commercial agency) . . .	"	3,000	51,000
17	called consulates of the fourth class, .	"	2,500	42,500
38	called consulates of the fifth class, .	"	2,000	76,000
56	called consulates of the sixth class, . .	"	1,500	84,000
28	called consulates of the seventh class (including five commercial agencies), . .	"	1,000	28,000
168,	that is, 162 consuls, 6 commercial agents, .	.		$ 327,000

All of these officers receiving salaries, with the exception of those in class seven and also those at four small commercial agencies, are prohibited from engaging in trade.

The changes proposed in the bill which passed the House of Representatives involve a very general reduction of the salaries thus stated: the abolition of the first and second classes of the established scheme, changes in the classes, and the withdrawal of this mode of compensation from about forty consulates; the effect of the whole being to reduce the appropriation by about $ 100,000.

The statute authorizes the appointment by the President of thirteen "consular clerks," who receive salaries of $ 1,000 each per annum from the time of their appointment until they have been in service continuously for five years, and thereafter $ 1,200 per annum. It was originally proposed to call these officers "consular pupils," after the *elèves consuls* known in the service of continental countries; we mention this circumstance because it aids to distinguish them from the "office clerks" employed, appointed and paid by such consuls as enjoy an allowance for clerk hire. The provision for consular pupils to be appointed by the President to the number of twenty-five, was originally made in a section of the fundamental act of 1856, of which we have already spoken; but this section was repealed within six months after the passage of the act, before any appointments had been made. It was revived in an act passed in 1864, still in force, and re-enacted in the Revised Statutes, the name of the officers being changed to "consular

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clerks," and the number being reduced to thirteen. We have heard it said that more than one hundred applications for appointment to this position were on file, awaiting the executive approval of the act of 1864; but Mr. Seward was ready for them, with a sufficiently severe schedule for the examination, which the law expressly required; and upon sight of this schedule nearly all the applicants withdrew. At any rate, only two were appointed in that year (1864) and no more during the next year. In the course of the year 1866 the authorized number of thirteen was filled up; but that the appointments have been made with sparing hand, and that no resignations have been forced, is proved by the fact that no more than thirty-two appointments in all have been made in the eleven years that the system has been in operation. These consular clerks, after a limited period of service in the Department of State at Washington, where they acquire an experience of great value to them afterwards, are assigned for duty at the consulates at which, in the opinion of the Secretary of State, they will prove most useful; and from time to time their positions are changed. The statute expressly provides that no consular clerk shall be removed from office, except for cause stated in writing and submitted to Congress; and in fact no vacancies have occurred, except by death or voluntary resignation. Several of them have been appointed to be consuls as occasion has arisen, and two at least have arrived at the rank of consul-general.

The excellent provision of law, authorizing the salary of these consular clerks to be increased to $1,200 after five years' continuous service, took effect in July last, when it was applicable to two only of the number; but, if we mistake not, it becomes applicable to three more in the course of the present year. We may therefore compute the annual expense of the salaries of this class of officers as follows: —

Eight consular clerks at . . .	$1,000	$8,000
Five " "	1,200	6,000
		$14,000

We have, then, as the aggregate expense of salaries allowed to consuls-general, consuls, commercial agents, and consular clerks, the following: —

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17	consuls-general, ...	$ 70,500
168	consuls (including six commercial agents) ,	327,000
13	consular clerks, ...	14,000
		$ 411,500

There are also about fifty-nine consuls and fourteen commercial agents who receive no salaries, but are allowed to retain the fees received by them. We have already remarked that heretofore there were sometimes posts of this class where the amount of fees received has been considerable, yielding in fact, in a few cases, a larger remuneration to the consul than the average of the fixed salaries. But this is no longer the case; under the existing revision of the laws, a salary is attached to nearly all posts where the fees exceed trifling amounts, and the provision of law remains in force which requires the return to the treasury by consuls thus compensated of the surplus of fees, if any, above $ 2,500, together with the sums expended, with the approval of the Secretary of State, for office rent and clerk hire; so that no consul paid by fees can have a personal compensation exceeding $ 2,500. But very few of them enjoy a compensation approaching that sum, or exceeding a few hundred dollars.

"Vice consul-general" and "deputy consul-general" are uncouth expressions that have been permitted to creep into the nomenclature of our service, unknown to that of other countries. In any system of regular gradation, the prefix "vice" indicates a rank below, and the suffix "general" indicates a rank above, that of "consul" to which they are attached. By combining the whole in one expression, however, it would seem that an effect is produced gratifying to the feelings of somebody. The officers enjoying these titles do not differ from simple vice-consuls and deputy-consuls, except that they serve at posts where the principal officer is a consul-general. It is contrary to our system to have a consul-general and a consul in service at the same time at the same post.

Vice-consuls and deputy-consuls, whether with or without the suffix of "general," receive no salary or other emolument from the government, but are compensated, if at all, out of the salary of the principal officer to whom they are respectively subordinate, according to such agreement as may be made be-

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tween him and them. The number of these officers should be about the same as the number of consuls-general and consuls, that is to say, two hundred and forty, as it is expected that there should be one at every consulate, to act in case of a vacancy, however temporary; but, in point of fact, the number is rather less, not exceeding, we believe, at the present time, two hundred and two. The deficiency is owing, no doubt, to the difficulty experienced at many posts of finding a suitable person to be invested with the responsibilities of the position and able to give the bond required by law. The technical distinction between a "vice-consul" and a "deputy-consul" is this, that the former is to act in the absences of the consul, or after his death or resignation, while a "deputy" may assist in the performance of the business of the office, even when the consul is present at his post. Sometimes both offices are held by the same person, and it rarely happens that separate appointments to both are made for the same post. Practically, at many posts, vice-consuls act as deputy-consuls. This being so, the distinction seems hardly worth preserving. All of these officers are appointed by the Secretary of State on the nomination of the consul-general or consul, under the power which the Constitution gives to Congress to "vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments." These remarks with reference to vice-consuls apply to "vice commercial agents," of whom there are about seventeen in service.

The post of vice-consul, however, derives an importance from the circumstance that when a vice-consul is in full charge of a consulate, he is entitled by law to receive the whole, or such part as the President may prescribe, of the compensation established for a consul at that post; and the usage has been to allow the whole. But as the vice-consuls very frequently are not citizens of the United States, they were, by another provision of law, until recently, prohibited from receiving any salary; or to state the fact more exactly, the officers of the treasury were prohibited from paying them. This system worked unequally, for some of them were able to conceal the fact of their non-citizenship, and the unfairness was so palpable of accepting a

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man's service to the extent of allowing him to act for the country, often during a considerable interval of time, and yet denying him any pay for the service thus rendered and accepted, that their accounts sometimes passed if the fact of non-citizenship did not appear on the face of the papers. The anomaly has now been set at rest, by a special enactment that "any vice-consul, who may be temporarily acting as consul during the absence of such consul, may receive compensation, notwithstanding that he is not a citizen of the United States." It would of course be desirable, if suitable persons could be found to accept such appointments, to have a vice-consul who is a citizen attached to every consulate; but this will obviously be impossible at the great majority of posts, until the government shall be prepared to establish a scheme of salaries for such officers. At the same time, in a service of at least two hundred and forty persons, it is clear that the chances of mortality will occasion five or six vacancies every year by reason of death. Upon the death of the consul, his effects, including the seal of the consulate, which, with a supply of blank official forms, may become a dangerous utensil in dishonest or mischievous hands, must fall into the hands of *somebody*; to say nothing of the archives and records of the consulate. In these days of open and frank dealing in matters of diplomacy, these things may be of little intrinsic value, but they certainly ought to be cared for. It is important that there should be on the spot a vice-consul, already known and recognized as such (whether formally or informally) by the local authority, prepared to take charge of the consulate without a moment's delay, to communicate with the Department of State, and to perform, at least such of the duties of the consul as may be within his competence, and necessary for the convenience of merchants, ship-masters, and travellers. The minimum interval before a vacancy can be filled and the new consul can arrive at his post will of course vary with its remoteness; and it happens that the more distant places are generally those at which the presence of an authorized and recognized *gérant*, in such cases, is most important. In point of fact, the interval, not unfrequently, extends over several months. A vice-consul, rendering as far as he is able the full service of a consul in

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such cases, of course should be compensated even if not a citizen, and this the law now allows. With this provision of law, the greatest pains should be taken to complete the list of appointments of vice-consuls, so that there should be one at every consulate; and in no case should compensation be allowed or subsequent recognition given to any person assuming to act as consul in cases of vacancy without a previous appointment as vice-consul from the Department.

Indeed, so important is this matter, that it would be advisable to supplement the present provisions by a standing instruction from the Department, or, if need be, by a law, requiring every consul, who for any reason has not the assistance of a vice-consul, to name in writing some proper person (the consul of a friendly power would generally be the most suitable), into whose possession, in the event of his own death, should at once pass the archives of his consulate, and especially his consular seal. The assent of such person having been obtained, and also that of this government, if the person selected were a colleague, his name should be communicated to the local authorities, as also, of course, to the Department, and to the minister of the United States in the country. Nobody can tell where death's dart will strike; but experience as well as the law of mortality teaches us that it will strike down several members of the consular service in every year. Consuls, as a rule, are not permitted to issue passports; but the rule has exceptions; so that a passport purporting to have issued from a consulate is not *prima facie* fraudulent. Many of the older consulates are plentifully provided with official blanks for passports with the eagle "as large as life," printed from an official plate, in the name of the "consulate of the United States of America, at ——," a blank anybody can fill. Although the workers in these arts are already tolerably well supplied with forms, it would be a prudent step to require the return of the greater part of these blanks to the Department, or their transport to some suitable place where they could be destroyed. At any rate, reasonable precautions should be taken for security that no more of them are stolen or pass into improper hands.

The description of the various grades in the consular service proper is completed by the mention of the "consular

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agents," of whom there are about three hundred and forty-seven. These officers are appointed by the Secretary of State on the nomination of consuls or commercial agents, to render official service in consular matters at such places within the jurisdiction of the consulate or commercial agency as furnish sufficient business to justify the appointment. Like vice-consuls, they receive no compensation from the government, but (subject to such arrangement as they may make with the consul or commercial agent on whose nomination they are appointed) they may retain the fees they receive up to the amount of $1,000. The arrangement usually made is to divide equally, so that a consular agent rarely enjoys more than $500 of emoluments, and the great majority receive very much less, even at places where there is commercial business. In some countries there is nothing of the fee-paying kind for consular agents to do, and they are really employed for the convenience of travellers, finding their compensation in the gratification they may experience in serving the Stars and Stripes. By an express provision of law, they receive no allowance, except for stationery and postage on official letters. Even the flags and arms of the United States, if they choose to display them, must be provided at their own expense. Although a great part of the consulates are without subordinate agencies, some of them have several.

In the case of a new appointment to a consulate-general, consulate, or commercial agency, the powers and functions of all the vices and deputies and consular agents at that post cease and determine ninety days after the day when the new chief enters upon the duties of his office, unless the nomination of the subordinate is meanwhile renewed by the new superior. This is rather a hard rule viewed from the point of view of the subordinates, every one of whom holds a certificate of appointment under the hand of the Secretary of State and the seal of the Department, — an appointment which the new consul has power to vacate, either by the mere act of nominating some other person, or by passively allowing it to expire for want of renewal. But it is probably a necessary incident of the existing system, although perhaps something might be done to render its operation less painful by express-

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ing more distinctly the tenure of office in the certificate of appointment first issued, or by notifying the change in a letter from the Department. A man who holds a public office, however humble, is apt to think that his appointment ought not to be withdrawn under any warrant less formal than that under which it was conferred; and he is not the less apt to believe this because his whole service has been rendered gratuitously, or when he has incurred expenses in its discharge, for which the government has not reimbursed him.

The fees allowed to be retained by the unsalaried consuls, and to a certain extent by consular agents, amount to an inconsiderable sum in proportion to the whole amount of fees collected by consuls; and it must be understood that, with these comparatively unimportant exceptions, every cent of the fees collected by consuls is returned to the treasury of the United States. No consul who has a salary gains any addition thereto by reason of the fees he collects, however large the amount. The revenue thus collected by consuls amounts to a very considerable sum, and under the more efficient administration of the service in recent years has become an important element in the miscellaneous receipts of the government. This will be evident to the reader when he is made aware that the amount of fees returned by the consuls during 1860, the last calendar year completed within President Buchanan's administration, was $99,113, which was about the average of those times. In the settlement of the accounts of consuls at the office of the fifth auditor of the treasury, year by year for a long series of years, the fees received were insufficient to cover the salaries, showing an annual deficit to be met by payments from the treasury, and this state of things continued until the year 1866.

In the year 1861, of which ten months were in President Lincoln's administration, the amount of fees returned fell as low as $77,590, many of the consuls of the old *régime* deeming it beneath their dignity to pay anything to the new administration. At this time a change was made in the year covered by the fifth auditor's report. For the first half of the year 1862, fees amounting to $47,781 were received from consuls; and for the next complete fiscal year, ending June 30, 1863,

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the amount was $152,982, — already a gain of more than one half from the average of the preceding administration, with no change in the laws affecting the matter.

On the 3d of March, 1863, Congress passed a law which took effect on the 1st of July in that year, providing that the invoices of all goods shipped to the United States from foreign countries must be exhibited in triplicate to a consular officer of the United States, who affixes a certificate under the consular seal to each of the triplicates. One of these he returns to the shipper, one he sends to the collector of the customs of the port in the United States where it is proposed to make entry of the goods, and the third he keeps on file, in order to be able to furnish a certified copy in case of the loss of either of the others. The design of this system "to prevent frauds upon the revenue" was declared in the title of the act, and it was very cleverly framed to effect its purpose. An incident or sequel of its passage, perhaps not wholly foreseen by its authors, was to vastly augment the functions of consuls, and to change the relative importance of different consulates. The place of "shipment" is defined to be the place where the goods have been manufactured, finished, or prepared for exportation, or where the journey to the Untied States begins; not necessarily, nor generally, the place they are actually put on board ship. The idea that the most important consulates are those at important seaports, and that consuls are officers having to do chiefly with ships and sailors, has been incorrect from the date of the passage of this act. The great business of our consuls, nowadays, taken as a whole, is attending to these invoices. The falling off in our shipping, due to the increased rates of insurance caused by the depredations of the Alabama, aggravated the effect. Many inland places became more important consulates than large seaports; many obscure towns proved to be centres of important business. New consulates were established, or new consular agencies to be attached to consulates already existing, for the convenience of shippers. Hence arose the anomalies and inequalities in the matter of compensation to which we have already alluded, and which it has been the aim of recent legislation to remove.

For the whole service of the verification of each invoice,

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including the certificates and seals for each of the three triplicates, the fee established by law was two dollars and a half, payable in gold or its equivalent. The fee is the same whether for a small exportation or a large one. A sailor on board a fruit ship from a Mediterranean port pays the same fee for a few boxes of figs which the captain allows him space to bring as a private "adventure," that the owners pay for the whole cargo included in one invoice to them. This is an inequality; and it might be well to exempt invoices of petty amounts from payment of the fee. The raising of revenue of course was not any principal purpose of the act. As a tax on commerce, indeed, the fee is objectionable; but in practice, the triplicate-invoice act does not appear to have operated disadvantageously on the whole, and it is generally regarded as an important part of the mechanism of the existing customs revenue system.

At all events, the act has operated to augment very considerably the amount of fees collected and returned by consuls. Without means to make an exact statement, it is probably fair to assume that two thirds of the fees collected are derived from invoices. The subjoined table shows the amount of fees collected by consuls and paid into the treasury for the years stated: —

FEES PAID INTO THE TREASURY BY CONSULS.

Year ending June 30, 1864	$254,218.34
" " " 1865	287,108.00
" " " 1866	442,477.56
" " " 1867	424,099.17
" " " 1868	435,179.73
" " " 1869	459,722.43
" " " 1870	534,670.79
" " " 1871	632,258.22
" " " 1872	706,907.95
" " " 1873	746,594.89
" " " 1874	715,202.94
" " " 1875	697,988.49

The comparison of these figures with those already given is enough to show that the fees paid into the treasury by consular officers very largely exceed the sums necessary to be drawn

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therefrom in payment of the salaries of those who are thus compensated. In addition to this, it must be remembered that fees not paid into the treasury provide the whole compensation for about seventy-five other consuls and commercial agents, and for about three hundred and fifty consular agents. The system is not only self-supporting, but actually yields a considerable net revenue to the treasury.

To present the matter, however, in another form, and with the sanction of an official statement, we invite attention to the subjoined table, which is derived from the annual report of the fifth auditor of the treasury for the year 1868, continued to the present time from materials furnished by the subsequent reports of the same office. This table, beginning with the year 1858, shows the deficiency each year for a series of years, and then the surplus each year for another series of years, arising from the settlement of consuls' accounts. The balances are not quite so favorable as they ought in truth to be, because the loss by exchange is added to the consuls' drafts for salaries on the one side; while the fees are all collected in gold or its equivalent, and if actually remitted to the United States would yield a premium on exchange more than enough to cover the loss by exchange on the smaller sum sent abroad to pay salaries. In point of fact the fees are disposed of (generally by remittance to the bankers of the United States in London) in such manner as consuls may be instructed, in order that they may be used in making payments abroad with the greatest advantage to the government. We make no change in the figures, however, on this account, preferring to present them precisely as officially reported by the fifth auditor. There are some slight differences from the figures we have already given for a few of the entire years, owing to the change from the calendar to the financial year already mentioned. The deficiency or surplus in each year is ascertained by comparing with the aggregate of fees collected, not only all payments of salaries to consuls-general, consuls, consular clerks, and commercial agents who are thus compensated for their services, but also the payments to such officers of this general description as collect an excess of fees over the amounts which they are severally allowed to retain for compensation. The following is the table: —

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DEFICIENCY OR SURPLUS IN THE SETTLEMENT OF CONSULS' ACCOUNTS EACH YEAR BETWEEN THE PAYMENT FOR SALARIES, INCLUDING LOSS BY EXCHANGE, AND THE AMOUNT OF FEES REMITTED.

Year.	Deficiency.	Surplus.
1858	$140,742.05	———
1859	157,157.44	———
1860	152,310.20	———
1861	160,410.04	———
1862	188,992.68	———
1863	252,417.43	———
1864	109,516.65	———
1865	71,653.64	———
1866	———	$91,906.62
1867	———	42,089.77
1868	———	61,428.84
1869	———	75,722.54
1870	———	73,706.20
1871	———	147,619.59
1872	———	223,682.84
1873	———	197,997.33
1874	———	144,517.18
1875	———	148,816.62

The allowances made to consuls in addition to their salaries, by the government of the United States, although less meagre than formerly, are still moderate. At certain posts, precisely designated by law, there is an allowance for clerk hire, the total sum thus authorized being $51,000. Consuls are generally allowed for office rent to an amount, until recently, not exceeding ten per cent, but now not exceeding twenty per cent, of their respective salaries. They are furnished at government expense with stationery for official purposes, the arms of the United States, seals, flags, and bookcases (only one at a time of any of these things), and are reimbursed their actual payments for postages and some other miscellaneous matters of absolutely necessary expenditure; but their accounts are subjected to a strict scrutiny, and they find themselves obliged to pay from their own pockets for many things which it often seems to them might reasonably be considered proper objects for allowance from the government.

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The allowances now authorized, compared with those previously made, would perhaps be regarded as sufficient, if they were not fettered by the specific language of the law, and if an account supported by vouchers were not required for every item. It is worthy of consideration, whether it would not be just as well (either with or without raising the percentage from twenty to twenty-five per cent of the salary) to make the allowance cover not only office rent, but all other incidentals whatsoever (excepting clerk hire and postages), certified by the consul as necessarily expended by him in the due discharge of his consular duties and the maintenance of his consular office. This, as we shall presently have occasion to explain, is the British usage, and it has one obvious advantage, in saving a world of red tape and of accounting-officers' time in the examination of vouchers and accounts. It is rarely, if ever, that the limit of expenditure authorized by law in such things is not fully attained. There is an infinity of detail involving expense to a consul for which no provision is now made, often in matters insignificant in themselves and not pleasant to talk about. For instance, no American citizen who has occasion to visit a consulate abroad, likes to see the windows dirty and the floor covered with filth. But who does he suppose ought to have washed the windows or swept out the office in the morning? The government does not allow a cent for any such expense. It would appear to be the theory of the government that the consul should wash his own windows and sweep his own office, on Jefferson's principle, that one is sure a thing is well done when he does it himself. Even clerk hire is allowed but at few places; a charge for anything like a porter or messenger would startle the accounting-officers at Washington like Oliver Twist's demand for a second helping of soup. So, also, the visiting citizen is probably pleased to find the consular office warmed in winter; and if it is open in the evening (as very many are kept open for the convenience of travellers, or at certain times, at seaports, for the convenience of ship-masters) it ought to be lighted; but no allowance for fuel or lights would pass in an account. Prior to 1852, indeed, consuls were expected to pay themselves for the paper on which they wrote their despatches and the pens with which they wrote them. Mr.

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Donald E. Mitchell (Ik Marvel), in his amusing account of his experiences as consul at Venice, attributes the allowance by the government of charges for official stationery to Mr. Edward Everett's brief term of service as Secretary of State. But even now, the consul must pay for the table on which he places his inkstand and paper, and (if not for the chair in which he sits himself) for the chairs in which the people sit who come to see him on business. Bookcases are the only articles of office furniture allowed to consular officers at government expense; and of these only one at a time. We have known of consuls ingenious enough to construct a plan of a bookcase that would also serve as a table or desk to write upon; but to make a set of chairs of any article that could be vouched for as a bookcase we believe has baffled even consular ingenuity.

All trouble about a vast variety of matters of this sort would be obviated by a fixed allowance for miscellaneous expenses of all kinds, proportionate to the salary; with the exception of clerk hire and postages, which we suggest as exceptions for obvious reasons. This might be done, and vouchers still be required; but we think it would be found advisable to adopt in this respect also the usage of the British government. As we have already said, when the amount of expenditure is limited, a voucher furnishes very little protection to the government; in the case of an officer willing to impose upon the government, no protection at all. The necessity for giving vouchers is often a source of great inconvenience, a hardship which presses most heavily on those consuls who are most sensitive about the scrupulous exactness of their accounts. We select for example this matter of office rent, the allowance of which is so gratefully accepted by consuls that they willingly undergo much annoyance to become entitled to it. A separate account is required for each quarter's rent, supported by a voucher showing that just the amount claimed in dollars and cents in gold was paid and received for that quarter's rent; the quarters being of course quarters of the Gregorian calendar year. But suppose the consul's post is in a Mohammedan country, where a year is but 354 days, corresponding neither at beginning or end with the Christian year; and suppose the custom of the country is to pay rents a year in advance, and that considerable pecuniary

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advantage results from a compliance with this custom. It is easy to say these things can be explained to the landlord, who will be glad enough to give vouchers to a paying tenant in any form required. Suppose, however, the landlord is a rich proprietor, or that he is an invisible and soulless corporation, like the Trustees of the Sears Estate in Boston, or the Vestry of Trinity Church in New York, owning large amounts of real estate and having their own usages and forms, on their side, to which *they* expect *tenants* to conform. To begin with, for the consul to be obliged to tell such people that he expects to be reimbursed the rent-money by his government, (and that so rich!) is to double the landlord's charge at the very threshold of the negotiation. These are no imaginary suppositions, but actual facts. How easy the temptation to the consul to abandon the landlord altogether, and get his official vouchers signed by somebody else; for who at Washington can possibly know who his landlord really is? Many people occupying offices in Boston or New York could not give the name of their landlords, that is, the actual owners of the buildings where their offices are situated, to save their lives. We must not be misunderstood; it is not at all probable that vouchers are rendered in excess of the sums expended; but this is due to the honesty of the consul and the meagreness of the allowance, not to any additional security furnished by the voucher.

If we turn from our own consular system to that of Great Britain, the only country rivalling the United States as a commercial power, we find that ours is an establishment as strong as theirs in the numbers, at least, of its *personnel*, but maintained at an inferior cost, the difference indeed being so considerable as to suggest almost irresistibly the inference that either we pay too little, or our cousins too much, for substantially the same thing. The British consular establishment consists of 33 consuls-general, 137 consuls, 414 vice-consuls, and 54 consular agents. Nearly all of these officers are paid salaries, or receive fixed allowances, or enjoy both of these sources of personal emolument from the government exchequer. A few consuls are designated in the lists as "unpaid," but none are compensated by fees, — that system being unknown in their service. The British exact a very much smaller amount of

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fees than ourselves, and all that is exacted is received into the exchequer. It is difficult to make a just comparison of the numbers of the two services, if vice-consuls and consular agents are included, because these classes of officers (especially the latter) stand on a different basis in our service, and are much more numerous. Taking *paid* consuls-general and consuls together, we have 185 against 170 in the British service. But it must be remembered that Great Britain has occasion to maintain but eleven consulates in the United States, while that Empire with the vast extent of its colonial dominions furnishes about sixty posts which we must fill with consuls-general or consuls to whom salaries are paid, besides fourteen more who are allowed to retain the fees they receive. Without going too closely into the comparison, it is perhaps fair to assume that each of the two countries maintains about the same number of consulates of the same degree of importance as the other in places not falling within the jurisdiction of either; the preponderance, however, being on the side of Great Britain.

Our service costs, as we have seen, for salaries, $411,500; for clerk hire, $51,000; for office rent, if estimated at the maximum, $79,100; and some other allowances, which may raise the whole sum to $600,000, more than the whole of which is reimbursed and cancelled by the amount of fees paid into the treasury by consuls.

On the other hand, the British government pays to consuls-general and consuls, salaries amounting to £100,000 sterling, besides making them allowances to an additional amount of £28,000, which they may use for clerk hire, office rent, or such other matters as appear to them respectively proper subjects of government expenditure, without rendering specific accounts therefor, and without furnishing vouchers. In addition, the British government pays to vice-consuls and consular agents salaries amounting to £20,000, with allowances amounting to £6,500. The aggregate of these sums is £154,500. Against this expenditure, the amount of fees remitted home from the several British consulates in recent years has been the following:—

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CONSULAR FEES RECEIVED BY THE BRITISH GOVERNMENT.

Years.	Amount.
1870–1	£ 33,448
1871–2	33,132
1872–3	30,282
1873–4*	31,258

While our service, therefore, is more than self-supporting, that of our British cousins, maintained at a gross expenditure one half larger than ours, requires an outgo from the exchequer equal to about $600,000 annually.

The British government also maintains a most comprehensive system of retiring pensions and superannuation allowances, under which not less than £ 17,000 annually is paid to rather more than fifty members of the consular service who have ceased to do any work.

Our survey of the consular system of the United States would be incomplete if we omitted to mention several matters which are either peculiar to certain consulates, or relate remotely, if at all, to strictly consular duties. We shall review them as briefly as possible.

The law authorizes the appointment by the President of eight interpreters, to be attached to consulates in China, Japan, and Siam, and also one at Hong Kong, which is a post in the British dominions. For four of these, salaries at the rate of $2,000 each are allowed, and for four others salaries at the rate of $750 each,—a rather wide difference. Besides this provision for interpreters appointed by the President, the law authorizes an allowance not exceeding $500 each for the compensation of interpreters at twelve other consulates in the same countries, and $500 each for "interpreters, guards, and other expenses" at six consulates in the Turkish dominions, namely, Constantinople, Smyrna, Cairo in Egypt, Beirut and Jerusalem in Syria, and Candia.

The law also, as we read it, authorizes the appointment of seven marshals for consular courts, four in China, one in Japan, one in Turkey, and one in Siam; the last, by an express provision of law, to receive no salary: it is perhaps needless

* This is the latest year for which the return is included in the most recent issue of the "British Foreign Office List," that for January, 1876.

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to add that the position is vacant. The authorized compensation for the other marshals is $1,000 each, together with the official fees received. The annual appropriation, including loss by exchange, has recently been $7,700; and we believe there are as many as four, besides a so-called vacancy in China, and two in Japan, in addition to the one in Turkey, at Constantinople. These officers are necessary, but they are needed at every consulate in the countries named, as well as at those specially designated in the law. If the allowance for "interpreters, guards, etc.," at certain consulates in the Turkish dominions, were enlarged and multiplied so as to cover all the more important consulates in China, Japan, Turkey, and Siam, the marshals might perhaps be dispensed with, without materially increasing the cost to the government.

The provisions of law last mentioned add fifteen to the number of persons belonging or attached to the consular service, holding appointments from the President or Secretary of State, making our total for the *personnel* (exclusive of the ministers resident and consuls-general to Hayti and Liberia) eight hundred and fifty-four, divided as follows: —

CONSULAR SERVICE OF THE UNITED STATES.

Receiving salaries, 213	1	agent and consul-general.
	1	secretary of legation and consul-general.
	15	consuls-general.
	162	consuls.
	6	commercial agents.
	13	consular clerks.
	8	interpreters at consulates.
	7	marshals of consular courts.
Not receiving salaries, 641 . . .	2	consuls-general.
	59	consuls.
	14	commercial agents.
	15	vice and deputy consuls-general.
	187	vice and deputy consuls.
	17	vice commercial agents.
	347	consular agents.
	854	

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We proceed to mention a few other matters, the expense of which does not appear to belong to the cost of the consular establishment proper, although they are necessarily provided for at the charge of the government. For rent of prisons and wages of the keepers, in the Oriental countries already mentioned in speaking of the interpreters and marshals, Congress annually appropriates various sums, amounting this year to $21,250, besides $5,000 for a court-house and jail at Yedo in Japan. For bringing home persons charged with crime, the usual appropriation has been $5,000. For the relief of distressed seamen, $100,000 is appropriated for the present year; the amount actually expended each year fluctuates with the number of marine disasters, and is always partially covered by the extra wages collected by consuls and remitted by them to the treasury. "To enable the President to acknowledge the services of masters and crews of foreign vessels in rescuing American citizens from shipwreck," $5,000 is appropriated this year, the same amount which has been usual heretofore. This is a piece of inexpensive international courtesy which the most rabid reformer in the pretended interest of economy should not wish to disturb. The acknowledgment is made, as occasions arise, in the form of the present of a chronometer, watch, or some other article useful to seamen, or a sum of money, sometimes, to be divided among several engaged together in the deed of humanity; the expenditures fall well within the appropriation, and a similar acknowledgment on the part of foreign governments is usual when American sailors rescue their subjects from shipwreck.

Besides proposing to amend existing laws to reduce the salaries of many consuls, as already mentioned, the bill of the House of Representatives proposes for the next financial year to reduce the allowances for the clerk hire of consuls from an aggregate of $51,000 to $42,600, and similar reductions in other appropriations, including some of those last mentioned, the most considerable apparent saving being in that for the relief of distressed seamen, which would be cut down from $100,000 to $60,000. It is sufficient to say of these proposals, that such of them as would actually take effect could only result in impairing the efficiency of the service, by contracting

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sums already pitifully scant; and securing an addition to the revenue derived from fees levied upon commerce by the doubtful means of diminishing the services for which the fees are exacted as an equivalent.

For allowance to widows or heirs of deceased diplomatic as well as consular officers "for the time that would necessarily be occupied in making the transit from the post of duty of the deceased to his residence in the United States," five thousand dollars is this year's appropriation, of which the smaller part attaches to the consular service, as the allowance is made at the rate of the salary. The reader will perhaps be surprised to learn that this provision for widows, certainly not overgenerous, is as recent as an act passed February 22, 1873. Before that date, when a minister or consul died abroad, whether alone or surrounded by his family, the accounting officer calculated his salary exactly to the day of his death, and the government paid no more.

This enumeration exhausts the list of government expenditures for objects connected with the consular service, if we except the appropriation for "necessary expenses attendant upon the execution of the Neutrality Act," which we mention, although it belongs rather to the diplomatic service than to the consular, if to either; being available, and used, no doubt, quite as frequently to cover objects of domestic as of foreign expenditure. We mention it because it explains the only appropriation to which the name of "secret-service fund" can with the slightest propriety attach, and it may be interesting to our readers to see just how much "secrecy" it implies, and how this is effected. The limitation in the law is thus expressed: —

"To be expended under the direction of the President, pursuant to the third section of the act of Congress of May 1, 1810, entitled 'An Act fixing the compensation of ministers and consuls residing on the coast of Barbary, and for other purposes.'"

Observe how scrupulously we adhere to the ways of the fathers. The act of May 1, 1810, was passed when the Republic had scarcely attained its majority, if that comes to republics at the age of twenty-one years. The act has long since become inoperative for any purpose save to serve for this reference in

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the annual appropriation, and indeed, for that or any other purpose, it has now been absorbed in the Revised Statutes, although, oddly enough, its substance there appears under the citation of a different act. But we will quote it as it was enacted sixty-five years ago, when the whole expenditures of the government scarcely exceeded $13,000,000, and that part of them affected by this act must have fallen short of $100,000.

In the first place, the carelessness of engrossing clerks, one after another, has done injustice to the title of the act. It does not relate merely to "ministers and consuls on the coast of Barbary," but it is entitled "an act fixing the compensation of public ministers, and of consuls residing on the coast of Barbary, and for other purposes"; it covered the whole diplomatic establishment of the infant Republic as it then existed, and the consular establishment so far as we had any, and it repealed two previous acts upon the same general subject. Its principal purpose was to define and limit salaries, the maximum for a minister plenipotentiary being fixed at $9,000; for a *chargé des affaires*, $4,500; for a secretary of legation, $2,000; for a consul to reside at Algiers, $4,000; for a consul to reside at any other of the states on the coast of Barbary, $2,000; not more than one consul to be appointed for any one of these states. It allowed not exceeding "one year's full salary" to be paid to a minister plenipotentiary or *chargé des affaires* as outfit,—a provision of law that was maintained until 1855; but at the same time carefully provided that "no *consul* shall be allowed an outfit in any case whatever, any usage or custom to the contrary notwithstanding." By the second section, provision was made to prevent the payment of these or any salaries to any person not duly appointed; this part of the act, which has no doubt always been in force, and is incorporated in the Revised Statutes, has not always, we fear, been strictly observed. Next followed the third section, to which the appropriation refers, in these words: —

"SECTION 3. *And be it further enacted*, That where any sum or sums of money shall be drawn from the treasury, under any law making appropriation for the contingent expenses of intercourse between the United States and foreign nations, the President shall be;

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and he hereby is, authorized to cause the same to be duly settled annually with the accounting-officers of the treasury, in the manner following, that is to say: By causing the same to be accounted for specially, in all instances wherein the expenditure thereof may in his judgment be made public; and by making a certificate of the amount of such expenditures as he may think it advisable not to specify; and every such certificate shall be deemed a sufficient voucher for the sum or sums therein expressed to have been expended."

As re-enacted in the Revised Statutes, where it stands as section 291, with a marginal reference to an act of February 9, 1793, which was repealed in 1798, the section applies to "any sum of money which has been or shall be issued from the treasury for the purpose of intercourse or treaty with foreign nations in pursuance of any law," and gives the President precisely the authority in the section just cited from the act of 1810, substituting the word "specifically" for "specially" (probably a clerical error in the act of 1810), and by using in the last clause, after the semicolon, the phrase, "and by making *or causing the Secretary of State to make* a certificate," etc. The provision applies therefor as a matter of standing law to the usual appropriation "for the contingent expenses of foreign intercourse proper and of all the missions abroad," which this year* is $100,000, the same sum which it has been for several years past. Until recently these appropriations were divided; whether together or separate, nearly the whole sum is necessarily absorbed by the most ordinary expenses of diplomatic officers, for there is no other appropriation from which they can be paid. Even with the addition of $20,000 for expenses under the Neutrality Act, the sum which could be applied to any secret purpose would be too small to give ground for alarm. The Neutrality Act, it is probably unnecessary to say, is the act of 1818, of which so much was said during the discussion of the Alabama claims, now forming title 67 of the Revised Statutes. For want of such an act, or for want of such effective proceedings on the part of the

* The vote taken in the House of Representatives on the 11th of February last would reduce the appropriation for this purpose for the next fiscal year to $50,000. It relates exclusively to the diplomatic service.

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executive as that act authorizes and requires, Great Britain was mulcted in damages to the amount of $15,500,000. We can well afford to keep the act upon our statute-book, to appropriate $20,000 a year for the expenses of its execution, and to allow the President large liberty of discretion in the expenditure. In point of fact the expenses are not large, and in some years the fund is not drawn upon at all.

It is gratifying to observe that contemporaneously with the measures taken by Congress within the last few years for improving the organization of the consular department, there has been an improvement in the matter of appointments, and some symptoms have appeared of a willingness to introduce the system of promotion within the service, which, if persevered in, would prove a most powerful stimulus to its efficiency. Mr. John M. Francis, who had been our minister resident in Greece since 1871, resigned in 1873. To fill this vacancy, Mr. J. Meredith Read, Jr., who had been our consul-general at Paris since 1869, was appointed minister resident to Greece. Mr. A. T. A. Torbert, who had been our consul-general at Havana since 1871, was appointed to be consul-general at Paris. Mr. Henry C. Hall, who had been our consul at Matanzas since 1864, was appointed to be consul-general at Havana. All three of these promotions were effected by appointments to the new positions under date of November 7, 1873. Finally, to fill the vacancy caused by Mr. Hall's transfer to Havana, Mr. James W. Steele was appointed to be consul at Matanzas under date of March 19, 1874, this being a new appointment from outside the service. The salary of the consul at Matanzas is $3,000; that of the consuls-general at Havana and at Paris, $6,000; that of minister-resident in Greece at the time of Mr. Read's appointment, was $7,500. The promotion to a post of greater responsibility and higher compensation was in each case a well-deserved recognition of the value of the services of a faithful and efficient public officer.

It would facilitate such transfers of a consul from one post to another, if it should be made a matter of usage, to which we can conceive of no objection, to make the original nomination by the President transmitted to the Senate for confir-

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mation, that of John Jones for instance, as "consul of the United States," without specifying any particular post for his service. The nomination once confirmed by the Senate, the officer would be duly appointed "consul," and he might be stationed for duty at first, if this be thought necessary, at the post contemplated at the time of his nomination; but he could be readily transferred to other posts from time to time as the exigencies of the service might require or the abilities he displayed might warrant. It would be thought a singular thing if a separate appointment, with the confirmation of the Senate, were required to invest a navy officer with the command of each particular ship to which he may be appointed; or an army officer to the command of each particular military post where his services may be needed. The absurdity of a precise designation of the post of duty in the first appointment is, however, equally great in the consular service.

The usage we suggest would moreover go far to mitigate the inconveniences to which we have alluded as arising when a vacancy occurs from the death of a consul at an important post, and for which the presence of a vice-consul is at best but an insufficient remedy, if the Secretary of State, or, in case of unusual emergency, the minister of the United States in the foreign country could at once send to the spot where the vacancy has arisen a consul of experience who might be spared temporarily at least from his regular post.

It would be easy to suggest some other matters in which, perhaps, improvements might be introduced into the consular service; but the great progress which has been quietly made within the last few years should assure the people of the United States that their interests will not be neglected in this respect, and give confidence that any check in the path of advance will be but temporary. Under all the drawbacks of insufficient salaries, unequal and inadequate allowances, entire want of system in appointments and absence of promotions, without pensions or retiring allowances, the consuls of the United States have heretofore proved themselves as a body as faithful and efficient as those in the similar service of any other country. Many distinguished gentlemen have been numbered in their ranks, and have displayed their abilities as occasion offered by

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acts of singular merit. To some of these men and deeds we had proposed to refer, but the limits we have already exceeded forbid. We esteemed it one of the special advantages of the recent improvements in the system, that meritorious officers already in the service might be led in consequence of them to continue in a career which, under the watchful supervision of the Department and intelligent legislation of Congress, seemed likely at last to deserve in some degree that name. It is to be hoped that the spasmodic and short-sighted action of the House of Representatives within the last few weeks may not operate as a discouragement.

CHARLES HALE.

ART. IV.— CHIEF JUSTICE CHASE.

IN speaking briefly of the life and character of Chief Justice Chase, no attempt will be made here to go much beyond those decided characteristics of the man that seem to mark him as one of the most distinguished of the present century, which has been by no means deficient in the number or qualities of its eminently great and good men. Omitting all discussion, except incidentally, of Mr. Chase's education, both preparatory and professional, and also of his services at the bar, and as Governor of Ohio, and Secretary of the Treasury, we shall limit ourselves mainly to two leading points, — his conservatism as a statesman, and his eminent qualities as a judge.

I. The world recognizes Mr. Chase as one of the most, if not the most, earnest and devoted among American advocates of antislavery principles. But he is even more distinguished, perhaps, for the quality and character of his opposition to slavery than for its earnestness and sincerity. While most reforms of this character, and this in particular, have been largely based upon the theory of schism and separation from the established order of things, both in the organic law of the government and especially in its administrative functions, there is nothing of this character, in any very marked degree certainly, in any thing said or done by Mr. Chase in opposition to slavery.

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He seemed to comprehend and to feel from the very outset of his long-continued and determined warfare against slavery, in all its manifestations and pretensions, that it existed as one of the recognized institutions of the country; that it really formed one of the essential compromises upon which the national Constitution was founded and without which it could not, probably, have been obtained; and that it must therefore be encountered by prudent administration and wise reform, instead of denunciation and revolution. Hence we find him, at all times, working diligently and patiently to effect all possible limitations and restrictions upon the institution, on the ground that freedom was national and slavery sectional; that by the long-established and clearly recognized principles of the common law of England, which this country had inherited or adopted in full measure, freedom possessed a charter everywhere within the dominion of the principles of magna charta, and slavery nowhere beyond the limits of its express recognition in the laws of the land.

Hence we have never heard from Mr. Chase, even in his most eloquent and excited harangues, in the courts or in the national Senate, or anywhere else where he was called repeatedly to enforce his antagonism against slavery, any of that violent or profane denunciation against the national Constitution, which, for a time, formed a not insignificant proportion of anti-slavery literature. It is not important now to inquire wherein consisted this firm and persistent conservatism of Mr. Chase's warfare upon slavery, or how it originated. If it had been a mere stroke of far-seeing and wisely planned policy, it would have been entirely justifiable, and eminently worthy of its author. For no one so wise and so discriminating as Mr. Chase could fail to comprehend that a nation, as stable and prosperous as ours, which had suffered so many hair-breadth escapes as we did in securing so unrivalled a constitution, would feel extreme reluctance, to say the least, in putting the whole in peril in order to initiate a reform so uncertain in its promise of favorable issue, however desirable they might regard it. He naturally felt, therefore, from the first, as a wise master-builder, that if slavery were ever to be expelled from our institutions, it must be done by the healthy and normal action of the vital

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forces within the Constitution itself. Some speculations upon the question of Mr. Chase's conservatism, more curious than wise, have attempted to deduce it in large measure from his religious training in the principles of the book of Common Prayer. No doubt the habit through life of asking divine aid, almost daily, in obtaining deliverance "from all heresy and schism," might be expected to have some effect in keeping one from separation and rebellion both in church and state. But Mr. Chase was not at all more conservative in regard to his antislavery action, or anything else, than was Mr. Lincoln, and probably no one will attribute any portion of the latter's conservatism to his religious training. We must therefore conclude that it was an instinct of self-preservation as to the government, and a far-seeing policy as to reform, in both these eminent men and in all our other most reliable statesmen, that while they have been awake to the necessity of reforms in the government, and especially in regard to the limitation and final extinction of slavery, both for our credit and our progress as a nation, they have all, with rare exceptions, felt the imperious necessity of keeping within the prescribed limits of our organic law.

Revolutionary radicalism is sometimes, no doubt, demanded, in large proportions, to initiate great national reforms, but something more conservative and prudent is commonly required to bring them to a successful issue, without serious detriment to other vital interests. But those who guide the storm and direct the whirlwind of human passion, however indispensable in all successful reforms, are not always the ones to whom the actors in the agitating scenes of the drama, at first, certainly, accord the highest measure of commendation; when the din of battle has passed away, the wise and the prudent will not fail of their due reward. The impartial historian will be compelled to award the largest measure of praise and glory to Mr. Chase, on the whole, as probably the wisest and most earnest of all the workers against slavery in our country.

He seemed to feel very early in his career, that antislavery, in order to be successful, must have the support of a party which did not profess any antagonism with the acknowledged principles of the written Constitution of the government. And

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although elected to the United States Senate by the co-operation of the Democratic party, with which he continued to act until he found it committed to the deliberate purpose of repealing the Missouri Compromise, and thus extending slavery or a contest for its establishment in all the Territories where either slave labor or the raising of slaves could be profitably pursued, he finally felt compelled to abandon that party and to constitute the Free-Soil party for the purpose of restricting slavery to the States where it was then tolerated. And notwithstanding his anomalous attitude in the Senate as to party affinities at this time, his position was nevertheless influential and commanding; and he aided, more than any other one man, perhaps, in the formation of the Free-Soil party. We are not disposed to underrate the efforts of that large class of workers and agitators in the same cause, who fell back upon the divine rights of humanity for their basis of action; which, however specious in theory or sometimes effective in rhetoric, has even less practical support in the true theory of civil government, than the much-abused maxim of the divine right of kings and of all governmental authority, which, indeed, receives but small countenance in modern theories of government. Admitting, in the abstract, the full force of all this unorganized and rebellious spirit against wrong and injustice, it is none the less evident to all reflecting persons that no such theory of reform can ever receive much countenance from the truly loyal, whose minds are so far instructed in the principles of government as fully to comprehend that in all their labors of this character they are but giving countenance and support to rebellion and revolution. Mr. Chase, both from education and principle, understood and felt all this, and comprehended fully that the masses of the American people were too conscientious in their religious feelings and too intelligent and well instructed in their allegiance to the Constitution, to initiate a revolution, even for the accomplishment of an end so desirable as the destruction of slavery; knowing, as he did, that the destruction of one of the recognized institutions of the country, by force and violence, could not probably be effected without the speedy destruction also of all government. No man comprehended this fundamental axiom in civil government more thoroughly or felt its force and

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truth more profoundly, we believe, than Mr. Chase. To the end, therefore, of establishing a theory, and founding an organization for the limitation and restriction and ultimate peaceful and legal extinction of slavery, he labored, so to speak, night and day, in season and out of season, with precious little aid, he must sometimes have felt, from those radical antislavery workers, not unjustly called the destructives of the party, who claimed to be enlisted, indeed, in the same crusade, but upon the muster-roll of Omnipotence Himself, and who would not therefore stoop to ordinary human agencies in the accomplishment of their purposes. There is always, in all countries, a numerous class of good men, who seem to suppose that the divine mind cannot but look with special favor upon those who defy all human law in the service of what they are pleased to dignify with the high-sounding epithets of "conscience" and "divine law," written, as they tell us, by the finger of Omnipotence upon the human heart; not always remembering that much of this depends upon the reader more than upon the writer. Some men, in all ages and countries, will insist upon reading "self-will" as if it were written "conscience."

But Mr. Chase suffered under no such hallucination or delusion. From the first he resolved to do his best, within the law, to crush the fatal curse of slavery which he knew was to some extent imbedded in the national Constitution. And he was wise enough to see his opportunity in the inauguration of the Free-Soil party in the national form it assumed in 1848, when it presented, as its candidate for President, one of the oldest, most highly honored, and respected of the old national Democratic party, who had already sustained the office of President for one term with the highest credit both to himself and the country, and who had been defeated in his re-election, as his friends believed, by the efforts of the slaveholders. When the constitutional opposition to slavery, of which Mr. Chase was at the time the acknowledged champion and leader, had accomplished all this, it required no prophetic inspiration to comprehend that its days were numbered and its final extinction could not be very remote. And if the spirit of Mr. Chase's constitutional opposition to slavery had been honestly and faithfully followed, there seems to us no great reason to

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question that slavery might have been abolished with less injustice, with infinitely less cost and suffering, and in little more time than has already elapsed in getting rid of it, without, in fact, in any very perfect manner ridding the nation of its evil consequences.

As evidence of Mr. Chase's conservative determination to demand nothing which he did not regard as strictly legal and constitutional, we may here refer to the theory for restricting slavery, which he maintained with so much zeal and eloquence in his speeches in the Senate and in his official communications as Governor of Ohio. In the Senate he urged the abolishing of slavery and by consequence the slave-trade in the District of Columbia by act of Congress, which was most unquestionably within the constitutional power of Congress, but which so advanced an antislavery advocate as the venerable John Quincy Adams long hesitated to urge, and which was, nevertheless, most unquestionably demanded by the justice, as well as the self-respect, of the national government. He also advocated declaring the inter-state slave-trade illegal by act of Congress, which no man now questions the power of that body to do, or to have done, at any time since the adoption of the national Constitution, and which would have done more, at one blow, to limit the institution within its then present boundaries, and finally to secure its extinction, without convulsion, than any measure ever proposed; but few except the slave-owners seemed then fully to comprehend either its justice or its power. He also urged upon Congress the enactment of laws excluding slavery from the Territories, the right to do which is now regarded as most unquestionable. And he sometimes urged, in the heat of debate, the repeal of all laws for the surrender of fugitives from labor, as not being justified by the provisions of the national Constitution, thus leaving that constitutional provision to be executed by those to whom the service of the fugitives was due. This opinion, although defended by the most plausible arguments, and held by some good lawyers, seems more the result of honest zeal in a good cause than of sound legal principles. But it possessed nothing of the revolutionary character, and one of his chief arguments against the earlier laws for surrendering fugitives from labor, that they attempted to

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control the action of State officials in effecting a strictly national function, has since been declared well founded by the national court of last resort.

There was, too, one other still more desperate resort than all others against slavery, which has since become very popular in some quarters, — the attempt to incite servile insurrections by means of military incursions set on foot in the free States against the slave States, to which, of course, no man of such comprehension and appreciation of the just obligations of civil allegiance as Mr. Chase could give the slightest countenance. His recorded opinion, as Governor of Ohio, when addressed upon the subject by Governor Wise of Virginia, in the autumn of 1859, just after the invasion of the latter State at Harper's Ferry, is worthy of repetition. "Whenever it shall be made to appear, either by evidence transmitted by you or otherwise, that unlawful combinations by any persons or at any place in Ohio have been formed for the invasion of Virginia, or for commission of crimes against her people, it will undoubtedly become the duty of the executive to use whatever power he may possess to break up such combinations and defeat their unlawful purposes; and that duty, it need not be doubted, will be promptly performed."

And when accused by Senator Butler, of South Carolina, of having drawn up and advocated a resolution in the anti-slavery convention of Ohio recommending those called to subscribe or take an oath to support the Constitution of the United States, to do it with the mental reservation that the provision for surrendering fugitives from labor was so absolutely void as to form no part of it, a view which he had in fact most strenuously opposed when offered by others, he declared in the Senate, "I never proposed the resolution; I never would propose or vote for such a resolution." By thus showing Mr. Chase's adherence to conservative principle in all his opposition to slavery, we may, possibly, not add very essentially to his present popularity, but we nevertheless deem it important to a just estimate of his true character, and important as tending very essentially to the more perfect comprehension of some other of his public acts not well understood by all. And we have no apprehension that his fame, in the long run, will suffer any

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abatement from the truth in this respect being fully and distinctly understood by all.

II. Mr. Chase's last great public office was that of Chief Justice of the National Supreme Court, as the immediate successor of two such incumbents as Marshall and Taney, both of whom deservedly rank among the greatest and best of all our eminent public men. Mr. Chase was appointed Chief Justice by Mr. Lincoln, with the approbation of the Senate, on the 6th of December, 1864, and received the oath of office and took his seat upon the bench on the 13th of that month. We do not suppose that Chief Justice Chase's opinions, during the nearly nine years that he held the office, although confessedly very able, will do complete justice to the high character of his weight and influence in the tribunal. His mind had been devoted to, and absorbed almost exclusively by other studies than those here demanded of him, for a very long period considering that it came out of the ripest portion of his mature life. He was now more than fifty-six years of age, and it was too late for ordinary men to make great proficiency in studies so long disused. But Mr. Chase's energy and devotion to duty enabled him sensibly to advance year by year in the attainment of that almost unparalleled excellence of judicial character and attainment ascribed by common consent to his great predecessors, till he was finally recognized by all the more eminent of the American bar as scarcely below the highest measure of greatness attained by any who had before graced the place he held.

For real greatness of soul and true nobleness of character he was indeed second to none, and for high and difficult attainments in the learning of the profession he had few if any superiors. His views were clear and far reaching, without becoming either hair-splitting in refinement or cloudy and obscure from the infinity of the range of their speculations. He always seemed to comprehend the true principles involved, in every case which came before him, even where he was not at first blush entirely familiar with all the learning upon the subject, but this he always mastered with astonishing celerity and accuracy. And his dignity and courtesy in presiding; his patience in listening to argument, sometimes to the dullest and

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most useless speculations of counsel which it would be an absurd anomaly to dignify by calling argument, and which manifests itself before this great national tribunal in larger measure and more offensive forms than in the State courts; his firmness in following his convictions, without forgetting, even for a moment, the respect due to the opinions of those who might fail to see the subject in the same light which he did, and his unwavering courage and determination to allow no obstacle to come between the court and the justice of the case, however humble or unpopular the cause or the parties, have left him an imperishable name among the noblest and the best American judges, the long list of whom will not, we believe, suffer in comparison with those of any age or country, either for learning or character. Chief Justice Chase's summary of the judicial qualities of one of the most valuable of the members of the court, Mr. Justice Catron, presents the outline of the highest judicial character, and, in many respects, is but a reflection of his own qualities as a judge. After dwelling briefly upon other excellences of his departed associate, he adds: "He was even more distinguished by strong practical good sense, by firmness of will, and straightforward honesty of purpose. Ever frank and earnest in the expression of his opinions, he was yet void of desire to impose them arbitrarily upon others. The candor and patience with which he listened to argument found fitting counterpart in the impartiality and equity of his judgments. While the records of this court endure they will recall the memory of the just and fearless magistrate who pronounced them." It is no doubt true that this must have been a somewhat studied eulogium of his departed brother, but if anything demands study and deliberation, it is what we say of the dead, that we may "nothing extenuate, nor set down aught in malice." But we must all feel and confess, that the man who entered upon his great office, with such a sublime estimate and comprehension of the eminent qualities of mind and heart demanded for the full discharge of its difficult duties, could not fail to reach a very high place among great judges. Such a comprehension of the high and difficult duties of his place seems even more indispensable, if possible, than the very highest attainments of professional learning, though this

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is more demanded in the office of a judge than in almost any other.

III. But we must briefly allude to two cases, where Chief Justice Chase has been sometimes criticised in no friendly spirit, — his agency in the first decision upon the legal tender question, and the part he took in the impeachment trial of President Johnson: 1. His judicial opinion in regard to the constitutionality of the issue of paper money and declaring it legal tender for all private debts, past and future, by act of Congress, would probably never have been questioned, certainly not in any spirit of rancor and bitterness, had it not been for the part he took, as Secretary of the Treasury, in the creation of this same paper and having it declared legal tender. The gravamen of the charge, therefore, brought against the Chief Justice is, that he could not have been sincere in both cases; and as he is known to have been intensely serious and in earnest in all his war measures, the inference of some heated partisans has been that his opinion in Hepburn *v.* Griswold (8 Wallace, 603) must have been the result of some transition state in regard to party affinities. This criticism of Mr. Chase seems to possess two very unfortunate, not to say discreditable elements,— discreditable, at least, to those who use it. First, it seems to imply that all opinions of public men, even of judges, must and will, if sincere, conform to the principles of the political party with which they act, at the time of their appointment. Secondly, there seems to be some kind of belief or claim sheltered under this particular form of the charge against the Chief Justice, that he was under a kind of imperfect moral or honorary duty towards the party which called him to the place, either never to change his legal views and opinions upon any subject of party policy, or, if he did, still to disguise his real convictions out of deference to those who gave him his place, in order that he might still continue to serve them "with a perfect mind and willing heart." One might have supposed any such claim impossible, if we did not know from observation how terrible to weak and cowardly minds is the effect of party terror. There have been thousands in our country, no doubt, and are still many more, who sincerely believe that the obligations to serve the party whose

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interests they espouse are superior to all other obligations, human or divine. There is some ground for hope that this vicious excess of party discipline is beginning to give place to better counsels, in some quarters at least, but it has thus far unquestionably in all parties been the cause of much evil and of more folly. The pretence that any one is not at liberty to change a legal opinion upon any subject while acting as judge sworn to do equal right and justice to all men, argues a depth of absurd ignorance or depravity, only to be found, one might fairly hope, among the blindest and the weakest of party following. Any one who had ever had much experience in judicial administration would never fail to feel the gross absurdity of all such pretensions. The writer of this article, although never, so far as he knows, suspected of any unreasonable distrust of his own opinions, whether those of first impression or not, feels compelled, in obedience to a proper respect for the truth, to declare that he has not seldom changed his opinion of the true principles of law governing a case more than once during the argument, and without question such has been the experience of all judges who have felt the same anxiety to reach the truth, as Chief Justice Chase always did. The saddest defect of capacity, either in a judge or any other person, is to become so satisfied with the speculations and conclusions of his own mind that he is no longer capable of listening to argument with a ready and teachable disposition to reach the truth without regard to his present convictions, except as they form part of the basis by which he hopes ultimately to reach the absolute or comparative certainty of what truth is. The just reply to all such cavils against any change of opinion will be found in the homely proverb, that "Wise men often change their opinions, but fools never."

It is known to all that Mr. Chase, as Secretary of the Treasury, adopted the opinion of making anything but coin legal tender, with extreme reluctance and distrust, and merely upon the ground of the exceptional necessities of the pressing exigencies of the war and with the determination to return to specie payment at the earliest practicable moment. The extended argument upon the question before the court by the ablest members of the American bar, and the very unsatisfac-

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tory ground upon which the foremost dissenting member of the court placed the argument in favor of the issue of legal-tender paper, might naturally have confirmed the Chief Justice in his early conviction, that the Constitution gave Congress no power to make anything but gold and silver coin a lawful tender in payment of private debts. His own argument in this case, and his dissenting opinion, when it was overruled in the Legal Tender cases (12 Wallace, 457, 570), is perhaps as satisfactory as any which has thus far been made upon the basis of finding the warrant for any such law in the express provisions of the Constitution.

The dissent of Mr. Justice Miller in the case of Hepburn *v.* Griswold places the argument in favor of the constitutionality of the legal-tender act, upon the ground, that it was a "proper and important, and at the time almost an indispensable measure for carrying into execution some of the powers vested by the Constitution in the government of the United States." The learned judge is unable to specify any one particular power of the national government to which this resort became an indispensable accessory, which seems an unfortunate infirmity in the argument; for despotism and irresponsible power are wont to lurk under such convenient generalities, and we involuntarily suspect the soundness of any theory which is not able to define, specifically, the grounds upon which its advocates are content to rest it. The learned judge, in his dissent, selects the War Power and the Borrowing Power, as the most plausible powers of the national government upon which to graft this, as an incident. This must appear to every experienced lawyer, as it no doubt did to the Chief Justice, a most unfortunate selection, at least in one very important particular. Neither of these powers is of the same class, or kind, with that of lawful tender; in legal phrase it is not *ejusdem generis*. This must be classed, and could only, naturally, be sought under the power to coin money and to provide a circulation for the country, and would naturally be expected to appear there, if anywhere, whether it were called a distinct power, or one accessory to others.

In looking at the specific provisions of the Constitution under this head, there would seem to be no question that the

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money function or power of the government was regarded, in its entirety, as a national function or power, and as such, was intended to be transferred, in all its parts and incidents, to the national government. Many of the functions of the national government were enjoyed in common with the States, such as making laws, erecting courts of justice, levying taxes, etc. Others, exclusively of a national character, were evidently intended to be transferred *in solido* to the national government. The money power and the commercial power were very clearly of this character, and with equal certainty, it appears, they were intended to be transferred entire to the government then being created, for the exercise of the exclusive national sovereignty, which powers before had resided largely in the separate States, either in whole, or concurrently with the former national authority. This is very apparent from the express provisions of the Constitution. In enumerating the powers of Congress the words used are, "To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. . . . . To provide for the punishment of counterfeiting the securities and current coin of the United States." The word "money" is again used in the provision for raising and supporting armies, in limiting the "appropriation of money to that use" to the term of two years. Again it is provided that "no money shall be drawn from the treasury," etc. And the States are expressly prohibited "to coin money, emit bills of credit; make anything but gold and silver coin a tender in payment of debts." From all which we must infer, that the making and the regulating the circulation and the value of money, and of everything supplying the place of money, must have been intended to be thenceforth exclusively under the control of the national government. The States had before, as is well known, emitted bills of credit and made them lawful tender for debts. (Craig *v.* Missouri, 4 Pet., U. S. 410.) All this is now prohibited to the States, and unless we can suppose it was intended altogether to prohibit the circulation and tender of such securities in future, we must suppose that power was intended to be exercised thereafter exclusively by the national government. If not, it is difficult to conjecture why it should have

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been expressly denied to the States and not to the nation. The granting titles of nobility is expressly denied, both to the States and the nation, because it was not intended to exist under the new form of government, in any form, or anywhere. Why, then, if it were intended to deny the power, both in the nation and the States, of issuing bills of credit and making them legal tender for private debts, should it have been expressly denied to the States and not to the national government? There can be no fair answer, as it seems to us, to this inquiry, except to recognize its continued existence in the national government. The fact, too, that provision is made, in the words of the Constitution, for punishing the counterfeiting the "*securities and current coin of the United States*," shows very clearly, that the existence and necessity of protecting the genuineness of such securities, as part of the currency of the nation, was distinctly in the mind of the framers of the Constitution, at the time it was presented for adoption. This provision for the punishment of counterfeiting the "*securities*" and "*current coin*" of the United States shows, very clearly, also, that it was intended for the protection of the *currency*, else the subject might have been left to the protection of the general law against the forgery of contracts. The word "counterfeiting," too, has a special application, by common usage and consent, to the currency of the country, although applicable also, in a less strict sense, to other forgeries. The use of the word "money," too, as embracing all appropriations from and the payment of all sums out of the treasury, would favor the same construction that "money" was intended to embrace, not only gold and silver coin, but all securities of the government used as circulation, or in payment of public appropriations from the treasury, for which, from some source, there has always, from before the date of the Constitution, been found a necessity. There were four banks of issue, in as many different States, existing at that date, and they have been constantly increasing in the States, until the national government finally deemed it the true policy to tax them out of existence, during the war, and to substitute legal-tender notes and the bills of the national banks in their place. This measure, which was declared legal by a majority

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of the National Supreme Court, in Veazie Bank *v.* Fenno, 8 Wallace, 533, is certainly not defensible upon any other grounds than that it is the duty of the national government to supply all kinds of circulation demanded by the exigencies of trade and commerce in the country, or of the government, as is justly maintained in the dissenting opinion of Mr. Justice Nelson, concurred in by Mr. Justice Davis. Some of our most eminent constitutional jurists, including Mr. Justice Story, who dissented from the opinion of the court in Briscoe *v.* The Bank of Kentucky, 11 Peters, U. S. 257, upon this ground, have maintained this view from the first adoption of the Constitution, namely, that the issue, by State banks, of bills for circulation, was not defensible under it. And this view may now be regarded as practically established. Indeed, we may fairly say, legally established, since the decision in Veazie Bank *v.* Fenno is placed by the Chief Justice upon that among other grounds, and it is the only one whereby the case can be made to stand with other decisions of the same court. We cannot imagine any ground upon which the creation of national banks of issue by Congress can be vindicated, except that under the United States Constitution it becomes the national duty to supply such a kind and amount of paper circulation as is demanded by the exigencies of the government and of trade and commerce throughout the country. Upon this ground only, therefore, that the Constitution was intended to transfer the making and regulating of the entire circulation of the country to the national government, and to deny any interference with it on the part of the States, is it possible, in our judgment, to find a legal basis whereon to rest the legal-tender provision in the issue of bills of credit during the war. That has always been done by the independent and sovereign European states. (Emperor of Austria *v.* Kossuth, 7 Jur. N. S. 483, id. 639.) And the British Parliament have made bills of the Bank of England legal tender at an early day for some purposes, and ultimately indeed for most purposes. And the same was the constant and well-recognized practice of the different American States, as to bills of credit, before the adoption of the United States Constitution. (Craig *v.* The State of Missouri, 4 Peters, U. S. 410.) If then we reach the conclusion,

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that it was intended to transfer to the national government the well known and long recognized function of national sovereignty, to coin money and emit bills of credit, and to declare them part of the circulation of the country, for purposes of trade and commerce, and thus make them lawful tender in payment of private debts, and to deny this entire function of sovereignty to the States, we shall find no difficulty in upholding the legal-tender acts, as proper, in a special emergency, notwithstanding we may suppose it was also the purpose of the Constitution to provide, either a currency in gold and silver, for ordinary times, or for all times, one redeemable in that medium. But the attempt to deduce such a power from some independent source in the Constitution, if it is not fairly implied in the definitions applicable to the money power, seems to us scarcely less than absurd. It is certainly in conflict with all the known canons of statutory and constitutional construction. For if it is not granted, either in terms or by fair implication, in that provision of which it is kindred, then it is there denied; and if denied there, it would seem a most unnatural and absurd conclusion to attempt to extract it by some refined process of construction, by reason of the pressure of an unprecedented war, out of an entirely foreign provision in the Constitution. We have been compelled to concede almost superhuman power to the war in turning and overturning principles of construction in the Constitution, but we have never found any reason for adopting this strange conclusion involved in the opinion by which the legal-tender clause was finally upheld, and we are satisfied from his opinion that the Chief Justice felt himself driven to the same conclusion, and we entertain no doubt that all good lawyers held the same views upon this question before the war. Nothing short of a degree of fever heat upon all questions connected with the war has ever been able, as far as we know, to drive any good lawyer to the conclusion now held on the subject of the legal-tender clause. And we feel assured, that the longer the question is discussed, and the more clearly it is understood in all its bearings, the more it will redound to the credit of Chief Justice Chase that he felt an utter inability to adopt the only view propounded by the advocates of the validity of the legal-tender

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acts. That he might not, upon the views we have here briefly presented, or upon some other, have come to a conclusion more favorable to the validity of the acts, we do not know. It is enough to satisfy us that he acted wisely in rejecting the only view presented, that it is one which no lawyer, in our judgment, has ever been able to render entirely plausible in a legal point of view even to himself, except upon the mere ground of the exigencies of the war, which, with due deference, seems to us no argument at all. It is but dire necessity which knows no law. It is a forced and unlawyerlike construction, and we believe it will some time give place to one more rational, and equally favorable to the maintenance of this indispensable function of national sovereignty, to make money either of metals or paper.

2. It remains only to speak in a very brief way of Chief Justice Chase's connection with the Impeachment Trial of President Johnson. The trial itself was of a character which had never before occurred under the Constitution. Not, indeed, because it was mainly of a political character, and instigated largely, if not exclusively, by partisan rancor; for most of the American state trials, and, for that matter, the state trials in all countries, naturally rest, in a great measure, upon that basis. But it was an attempt to remove from office, and render forever infamous, the chief executive magistrate of the nation, upon charges of high crimes and misdemeanors, resting altogether, as far as we could ever see, upon the fact that the accused, being always, before the war, a member of the Democratic party, had come into the Republican party upon the issues involved in that controversy, and thus been elected Vice-President of the nation, and in consequence of the lamented death, by assassination, of President Lincoln, had succeeded to the office of President; and in the discharge of the duties of that office had fallen back upon some of the theoretical views and opinions in which he was educated and had hitherto acted. It may be fair, also, to remember, that after Mr. Johnson had been hotly pushed, and rudely rebuked, for not conforming more closely to the views and feelings of his new associates, he very probably had manifested some degree of stubbornness, and violence of temper and over-ardent zeal possibly,

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and thus provoked numerous conflicts and some personal quarrels with his subordinates. The attempt to impeach him for malfeasance in office, however, in any view, rested mainly upon no better ground than that he was in the way, and an obstruction to the speedy accomplishment of most of the party policies of the hour. It being known, also, that if he could be put out of place, his successor would prove a most subservient and devoted champion of the party, it became, in the view of the party leaders, a most desirable object to effect the change. There was, however, no regular and legal mode of effecting this, and most of those who afterwards entered into the prosecution with such apparent sincerity of purpose would, if left to their own impulses, no doubt have been content to wait the expiration of Mr. Johnson's term of office. But some few of the more resolute and determined, and not very scrupulous, perhaps, as is common in like emergencies in all parties, devised the plan of the impeachment. This possessed an imposing sound, and carried the more simple and subservient of the party with a rush amounting almost to frenzy and infatuation, as if it were one of the most righteous and praiseworthy indictments ever drawn up, against the most desperate and heartless villain; almost without a parallel in the history of crime. Many attempted to give the trial a kind of factitious glory and grandeur, by comparing it with Bradshaw's Regicide Court, and the condemnation of Charles I. of England.

It would seem that the leaders had resolved, from the very outset, to make the trial as strictly political and partisan as possible, in order to preclude any faltering in the conduct of the senatorial majority, which would thus be ample to secure a conviction in any emergency, about four fifths being of the dominant party. They determined, therefore, that the tribunal should not even be called "a court," but a Senate, or Council of State, convened to record the demands or decrees of the party, in obedience to the dictates of a party caucus, either openly or covertly convened. These men knew the temper and high tone as well as the talent of the Chief Justice, and they naturally dreaded the power of his influence in defeating their bad schemes. They therefore resolved at once to move upon this citadel of justice, which had now become their most dreaded

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enemy, with their boldest and best-disciplined troops, and thus by a desperate charge break, if possible, the outer lines of his defences and ultimately compel him to surrender, willingly if possible, but forcibly if necessary, to their imperious demands. The managers upon the part of the House, accordingly, through a committee of the Senate, informed the Chief Justice, in advance of his taking his seat as President of the Court of Impeachment, that they would not recognize him in any other capacity than that of a simple moderator, to keep order and put questions, with no voice whatever in the proceedings, either to speak or to vote upon an equal division. This the Chief Justice, in a forcible and temperate reply, met squarely in the face, denying in the clearest and most unanswerable manner every requirement and demand of this arbitrary and desperate attempt on the part of the managers of the party to overawe the court and to exclude its appointed head, in the very words of the Constitution, from all just participation in the trial.

After the Chief Justice took his seat, however, as the head of the tribunal, it very early and very clearly became apparent that he was adequate to the emergency in giving the proper direction to the movements of the court. Even the most eloquent and daring of the managers seemed awed into decorum and silence by the presence, dignity, and impartiality of Mr. Chase throughout the trial, and never made any further attempt to enforce their demands, except by occasional appeals to the body of the court from the rulings of the Chief Justice, and in these they were signally defeated, the court even modifying their rules of order, prepared in advance in order to exclude the proper voice of the Chief Justice, thereby allowing him, by a clear majority of their number, to rule all points of order and of law, in the first instance, subject to appeal to the court if any senator desired it, and to give the casting vote upon any equal division of the court. It is too near the time of the trial and too many worthy and high-minded men were rashly driven or drawn into the effort to convict Mr. Johnson without evidence, to render it desirable to revive the incidents of the trial in detail. But, as before stated, thus it occurred, through the almost sublime determination and unequalled

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talent and energy of the Chief Justice, as it always appeared to us, that what was designed as a mere formality in the sacrifice of Mr. Johnson upon the altar of mad party zeal became a dignified and decorous tribunal for his trial and acquittal.

This trial in fact began and ended almost in the very identical footprints of all our important state trials. The trial of Judges Samuel Chase of the National Supreme Court, and Peck of the District Court of Missouri, began in party rancor and ended in an acquittal by reason of some few of the more judicial-minded members of the Senate refusing to convict upon merely partisan grounds. So, too, in the case of Mr. Johnson, much of the more eminently legal and judicial talent of the majority which had been confidently depended upon for his condemnation refused to soil the ermine of the judge by any such base prostitution.

But we have said all that we desire upon this portion of Chief Justice Chase's judicial life. His conduct and talent, displayed in vindicating the character of the tribunal and his own position in regard to it, form unquestionably the most important and characteristic act of his judicial life, and did more, probably, than any other thing to secure the acquittal of the accused, and thus save as far as it could be done the credit both of the country and of the party instigating the prosecution. The accused before his death was returned a member of that same Senate and declared his determination to forgive and forget all past injuries at the hands of those who sought his overthrow. It is surely proper that others do the same. We would not have alluded to it but for the exceptional importance of the Chief Justice's connection with the trial and the essential bearing it will always be entitled to hold as evidence that Chief Justice Chase may justly be reckoned among the three great Chief Justices of the Supreme Court of the nation.

It is idle to suppose that Chief Justice Chase felt any special interest either in Mr. Johnson or his acquittal, except as it came from his general love of justice and his natural and just indignation at so barefaced an attempt to convert the highest judicial tribunal known to the Constitution and laws into a mere political and partisan instrument, while sitting to deprive

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the highest executive officer of the nation, not only of his office, but virtually of his life and character at the same time, since it would deprive both of all value to an honorable man. The solemn farce maintained on the part of most of the managers of persistent refusal to address the Court of Impeachment during the trial in that language of courtesy due to the humblest municipal tribunal received fitting rebuke at the hands of Mr. Stevens of Pennsylvania, one of the managers, whose hatred of shams was only equalled by his love of decency, when he began his final argument in the case thus: "Mr. Chief Justice, may it please the court," — thus yielding everything upon this point which could fairly have been demanded, going even beyond the formal address of the counsel for the accused, who contented themselves with "Mr. Chief Justice and Senators," while the other managers persistently declined to address the court as such, or its head as Chief Justice.

We have thus made a brief, and we fear, somewhat imperfect record of the leading incidents in the public life and conduct as well as an estimate of the true character of one of the great and good men of the Republic. Few, if any, others have been called to the discharge of the duties of so many of the high places in office, both State and national, and no one, we believe, ever evinced the same degree of superiority and eminence in all the places of public trust to which he was called in such various and almost incompatible qualifications.

ISAAC F. REDFIELD.

ART. V. — 1. *Report to the Legislature of Massachusetts of the Commissioners appointed to inquire into the Expediency of revising and amending the Laws relating to Taxation and exemption therefrom.* Boston, January, 1875.

2. *Report of the Treasurer and Auditor of Virginia to the House of Delegates on the Subject of Taxation, together with the Draft of a Tax Bill.* Richmond, November, 1874.

3. *Report of the Joint Special Committee on the Subject of Property liable to and exempt from Taxation, made to the General Assembly of the State of Rhode Island.* January, 1875.

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4. *Report of the State Assessors of the State of New York.* Transmitted to the Legislature, January, 1874.
5. *Taxation; Address of George H. Andrews before the Assembly Committee of Ways and Means of the State of New York.* Delivered October 6, 1874.
6. *Exclusive Taxation of Real Estate, and the Franchises of a few specified Moneyed Corporations and Gas Companies.* By ISAAC SHERMAN. New York, 1875.
7. *Methods of Valuation of Real Estate for Taxation.* Read before the Social Science Association of Philadelphia, May, 1874. By THOMAS COCHRAN.
8. *Taxes and Assessments in the City of New York; Report of the Commissioners of Taxes.* 1875.
9. *The Law of Taxation.* By FRANCIS HILLIARD. Boston: Little and Brown. 1875.
10. *The Tax Question: What should be taxed, and how it should be taxed. Suggestions for the People of Tennessee to consider.* By ENOCH ENSLEY, of Memphis, Tennessee. Nashville, 1873.
11. *Taxation of Visible Property.* By WILLIAM ENDICOTT. Boston, 1875.
12. *Unequal State Taxation.* By GEO. H. ANDREWS. New York, 1875.
13. *Unequal Taxation in Delaware.* By ISAAC HINCKLEY. Philadelphia, 1875.
14. *Report of Tax Commissioner, specially appointed under Resolve of the Legislature of the State of Maine.* Augusta, 1874.
15. *Report of Committee of Ways and Means of the Assembly of the State of New York*, 1874–5; *Special Investigation on the Subject of Taxation.* Albany, 1875.

FOR many years previous to the commencement of the war in 1861 there was no one class of subjects which claimed in so small a degree the attention of the people of the United States as those of a politico-economic character, — more especially such as pertained to the fiscal administration of the State, the methods and objects of taxation, the distribution of wealth, banking and currency, and the like. That this should have been so is not, however, a matter to be wondered at. The nation, and the several States composing it, were at the period

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referred to comparatively free from debt. All taxation was light. Direct taxation by the Federal Government was unknown. Pauperism was mainly restricted to persons of foreign nativity; while to all who were willing to practise both industry and economy, the ability to command a good subsistence, if not an ultimate competence, seemed comparatively easy. Why should the nation trouble itself about vexing and intricate fiscal and social problems before there was occasion? And taking counsel accordingly from the proverb, "Sufficient unto the day is the evil thereof," the nation did not trouble itself.

But with the advent and continuance of the war, the creation of an immense national debt, the suspension of specie payments, the resort to irredeemable paper money, and the re-enactment of extreme protective tariffs, the condition of things above depicted rapidly changed; and the questions and problems which in popular estimation were before insignificant, have rapidly become so important, as to constitute not only the theme of never-ending public discussion, but also the certain issues, on which are to be built the national political parties of the future. And as illustrating in some degree the nature and strength of what may be termed the motor or impelling influences which have forced these changes in public opinion, what could be more pertinent than the statement recently made by the Governor of New York (message of May 11, 1875), that in 1874 less than two millions and a half of the inhabitants of the cities of New York paid in taxes, nearly as much ($50,429,000) as was the entire cost of the Federal Government — including interest on the public debt — in 1853, namely, $54,577,000? And he might to our profit and instruction have further added that, taking the aggregate of taxation as the basis of estimate, it cost more by nearly twenty millions to govern the entire State of New York in 1872 than it did to govern the whole Federal Union — war, navy, Indians, interest and all — in 1849. The general public, like the tortoise, is naturally sluggish in its disposition; but as a coal of fire placed on the back of the latter wonderfully accelerates its movements, so the material influence of facts, like those above referred to (in contradistinction to any moral influence), gradually penetrating the hard shell of popular indifference, have

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quickened in an amazing degree the interest of the American public in all manner of fiscal and economic subjects. And as a further illustration of how comparatively great the present interest in such subjects is among a people, who ten years ago read few books on political economy, and wrote and published almost none at all, it may be also mentioned, that on the subject of specie resumption and currency alone, probably not less than two hundred separate pamphlets — exclusive of Congressional speeches — have been issued from the American press since 1870.

The various subjects of a politico-economic character which since the close of the war in 1865 have commanded public attention have not, however, come up simultaneously for consideration; but have been evolved, as it were, gradually, from the changing condition of affairs, and somewhat in the following order: *First.* The national debt and its transition from a miscellaneous and temporary to a more permanent and consolidated character, — a work the magnitude and delicacy of which, as well as the skill with which it was executed by the then Secretary of the Treasury, Mr. McCulloch, — has never been properly appreciated. *Second.* The readjustment of the war system of internal taxation. *Third.* The questions of currency, specie redemption, and the retroactive application of the enactment of "legal tender." *Fourth.* The free-trade and protective question, — the interest in which was temporarily smothered by the paradoxical results of the Cincinnati Convention of 1872. *Fifth.* The relations of the State to common carriers, and the methods of intercommunication. *Sixth.* The extent to which the complicated system of import or customs taxes were to be administered through the agency of espionage, special agents and moieties; and latterly, and as yet to a small extent, the subject concerning which it is here specially proposed to treat, — local taxation.

In fact, it is one of the curious incidents of our times, that this particular subject, which exclusively embraces within its scope the methods of raising annually a sum for public purposes ($280,000,000, estimated) nearly double that at present derived annually from our customs or import taxes ($155,000,000 for 1874–5); and nearly three fourths of the total

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revenue derived by Great Britain from all imperial taxes (£77,000,000 = $385,000,000, in 1874 – 5),* should up to within a very recent period have had absolutely no hold whatever on the attention of the American people, and no place of any account in economic literature, — the only treatise or work of any importance, treating of local taxation in detail, published prior to 1870, of which we have any knowledge, being "A Report on the State Assessment Laws," by a joint select committee of the legislature of New York, in 1863, to which was appended "A Digest of the Mode or Method of Taxation in the several States," by Alfred B. Street. In 1870, however, the very great importance of the subject having impressed itself upon the attention of Hon. John T. Hoffman, then governor of the State of New York, he induced the legislature of that State to authorize the appointment of a select commission; which commission after an examination of the whole field of inquiry submitted two reports (in two successive years, 1872 and 1873), embodying in addition to a draft of a code of laws and a digest of court decisions, much information of a historical nature; and for the first time in the United States, a discussion of the fundamental principles involved in local taxation, and the theory of their more harmonious application to the anomalous condition of thirty-seven contiguous, sovereign States, embraced under one over-ruling and greater sovereignty. These reports also for the first time in this country created any thing approximating to general public interest in the subject. The report for 1872 was immediately reprinted by private parties for sale as a matter of business, — a circumstance most unusual as respects a public legislative document; while to meet the demands of several constitutional conventions of other States then in session, special editions were ordered and distributed by the State authorities of New York. In Europe, also, both reports were

* The aggregate amount annually raised by local taxation (state, county, city and town taxes) for all purposes in the four States of Massachusetts, New York, Pennsylvania, and Ohio, is about $150,000,000, apportioned approximately as follows: Massachusetts, $28,000,000; New York, $55,000,000; Pennsylvania, $40,000,000; Ohio, $27,952,000. The amount raised by local taxation in all the other States of the Union cannot be estimated at less than $130,000,000 additional; making an annual aggregate of about $280,000,000.

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reprinted and extensively circulated under the auspices of the Cobden Club of England.

In one sense the work of the New York Commission was a failure, but in another it has been a success. It was a failure in the sense that none of its recommendations nor its code have been adopted, and that successive Legislatures in New York have not even so much as proposed to consider its recommendations. It has been a success in the sense that it was the incipient agency in creating a permanent public interest in the principles it discussed, and of the present extent of which the partial list of recent publications constituting the preface of this article affords some indication.

Another agency which has also powerfully contributed within the last few years to make local taxation an independent economic issue of interest before the public, and is likely to continue to do so, is the action of the Federal Courts. So long as the aggregate taxation of the several States was comparatively small, as before the war, and so long as the spirit of patriotism engendered by the war regarded no burden designed to aid in the preservation of the Federal Union as too heavy or unreasonable, there was little disposition to criticise closely or to complain at the methods locally adopted for obtaining revenues by taxation. But when, after the war, this special burden by reason of increased debts and expenditures assumed the character of a continually increasing strain unrelieved by anything approximating to sentiment, then men became both critical and querulous, and very soon cases involving fundamentally the principles and constitutionality of the tax methods resorted to by the several States began to come before the highest Federal Courts for review and determination. The result has been that while as yet little or nothing in the way of reform in local taxation has been effected through the action of State Legislatures, a progress rapid, continuous, and complete, to an extent which neither the bar nor the public seem to have as yet fully comprehended, has been made in this same department of fiscal science through a series of decisions of the U. S. Supreme Court; not a few of the most intricate questions involved, and concerning which it would have been hopeless to have expected early and concurrent agreement on the part of

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the States, having, since 1858, by re-adjudication, or original decisions, been settled beyond the possibility of controversy. These in their proper order it is proposed to notice hereafter; but prior to doing so, it seems essential to a clear and full comprehension of the reforms already effected and of those which through all agencies are to be struggled for in the future, to go back and present a review of the whole subject as it were *ab initio*.

The general idea or principle which has thus far been made the basis of nearly all the law and administration pertaining to local taxation in the United States has been founded on a popular assumption, that in order to tax equitably it is necessary to assess everything; the term *everything* being at the same time used in a sense so indefinite as to embrace not merely things in the nature of physical actualities other than persons, but also persons, income, rights, representatives of property, titles, trusts, conclusions of law, debts, and in short any *act* of assessing capable of resulting in the obtaining of revenue. As a logical sequence of this idea, the exemption of anything from taxation is furthermore held to be not only impolitic but unjust, and if made necessary by circumstances, as something to be regretted.

Equally popular and plausible is the argument by which this assumption, and the administrative system based on it is upheld and defended. "Is not all property," it is asked, "either directly or through its owner protected by the State or Sovereignty?" "Do not all persons owe allegiance to the State?" And if so, "Why should not all persons and property contribute to the requirements of the State for revenue, in proportion to their ability?"

But popular and plausible as are the assumptions and arguments on which the existing system of local taxation has been built up, made operative over the persons, property, and business of more than forty millions of people, and fortified by a vast amount of adjudication, it will require but little investigation and analysis to satisfy any one who can divest himself from the influence of old prejudice, of the truth of the following propositions: *First*. That the assumption that it is necessary to assess everything in order to tax equitably involves an impossibility,

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and therefore unavoidable inefficiency, injustice, and inequality in administration. *Second.* That as popularly used in respect to matters pertaining to taxation, the term *property* is made to apply equally to entities and to symbols, or non-entities, which in itself is an absurdity; and, *finally*, that the outcome of all this is a system which powerfully contributes to arrest and hinder natural development, to corrupt society, and is without a parallel in any country claiming to be civilized. And as further illustration of this latter point it may be added that notwithstanding the recent discussions, the whole subject is yet so unfamiliar to the people of the United States that probably nine out of ten of our best informed readers, and even of the members of the bar, take it for granted that the method of assessing and collecting taxes for local and municipal purposes is substantially the same all the world over, and would be greatly surprised to find on investigation that the American system is one of the things exclusively American and so little esteemed by the people of other countries as to be for this reason strictly "non-exportable."

These assertions may appear unwarrantable to some men, and as testifying of conceit rather than of knowledge; but whether this be so or not, a consideration of the following facts will help to determine.

In the incipient stages of society, where property consists almost or quite exclusively of things tangible and visible, lands, buildings, slaves, cattle, ships, household effects and implements, the theory that equality of taxation requires the assessment of everything was not impracticable in application, and under most circumstances afforded but little opportunity for the working of injustice in respect to arbitrary discriminations in assessing. But its full execution must, nevertheless, even in the most simple condition of society, have been always attended with great difficulties. There is nothing which men more abhor in government than personal inquisitions, and in the language of a committee of the French National Assembly of 1789 (of which Talleyrand and Larochefoucauld were members), the recognition and practice of such inquisitions by any government is something inconsistent with and antagonistic to the maintenance of a free people. Again, had nothing

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come down to us in English history from the time of Edward III. other than one of the assessment rolls of the period (when there was little or no property capable of taxation but what was visible and tangible), the evidence would be complete that the mass of the English people were but little better than slaves, for the mere inspection of such rolls shows that their preparation involved such an inquisitorial scrutiny into domestic life, such a seeing, handling, and valuation of everything in the household, from the utensils of the kitchen to the furniture of the bedchamber, as to make personal freedom or a sense of personal self-respect on the part of the tax-payer who submitted to such a scrutiny, almost an impossibility.* And in this connection it is also pertinent to call attention to the circumstance that the famous insurrection of English yeomen and peasants under Wat Tyler in the reign of Richard II. (the successor of Edward III.), originated directly in the attempt of a tax-gatherer or assessor to ascertain by brutal personal examination whether a daughter of Wat Tyler had attained the age of puberty, and in consequence had so become liable to enrolment for capitation assessment.

But to whatever extent simplicity in the elements of property simplified the original methods and ideas in respect to local taxation, the problem involved rapidly changed, and became more and more intricate as increasing population and increasing commerce and intercommunication between States and communities required that property should to a great extent be put into a condition to admit of being readily mobilized, in order to allow of its most profitable use and application. Thus a large proportion of what is to-day popularly termed "personal property" in every highly civilized State is of the most intangible character, and in great part invisible and incorporeal; such, for example, as negotiable instruments in the form of bills of exchange, State, municipal, and corporate bonds, and the multiplied forms of evidence of indebtedness;

* A copy of an assessment roll of the time of Edward III. 1329 – 1376, given by Lingard in his History of England, contains a list of articles down to a towel and a bench; and the historian notes that in the returns are carefully mentioned the very rooms in which the articles were found, and that there were no exemptions except one suit of clothes for each person, which were supposed to be included in the tax levied on the polls, or the person.

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all of which, if entitled to the name of property, is through a great variety of circumstances, constantly fluctuating in value; is offset by other indebtedness, which may not be the same one hour with another; is easy of transfer, and by simple delivery is, in fact, transferred continually from one locality to another, and from the protection and laws of one State to the sovereignty and jurisdiction of some other. In the absence of the power of clairvoyance, therefore, any attempt on the part of an assessor to obtain independent cognizance of such commercial and financial instrumentalities for the purpose of valuation and assessment is, on its face, an impossibility; and if the co-operation of the person to be assessed is to be invited or relied on, two of the most powerful influences that can control human action, love of gain or the unwillingness to part with property, and the desire to avoid publicity in respect to one's private affairs, immediately unite to oppose and prevent such co-operation.

A resort to personal inquisition, with an accompanying machinery of oaths, "dooming," and penalties is next in order; under which the State, ignoring all rules enacted for the protection of debtors in the ordinary collection of debts, pursues the citizen for the collection of what it claims to be a debt, with no better result in nine cases out of ten than the impairment of the public sense of both justice and morality.*

But this statement very far from embraces all the difficulties inherent to this popular theory of the necessity of taxing everything in order to insure justice and equality. A further very large proportion of the so-called personal property of the country, which is *not* invisible or intangible, and which requires

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* "It is claimed that each individual owes the State annually a certain sum of money in the way of taxes proportioned to his entire property. If he voluntarily pays, he escapes arbitrary measures. If he declines to pay or tries to avoid payment, he has no just cause to complain if he is regarded in the light of a criminal, or if the same arbitrary measures are used to collect his tax as if it were a debt owing by one citizen to another.

"But let us examine this averment. If the defaulting tax-payer is to be regarded as a criminal, and as such placed in the worst possible light, he certainly ought not to be deprived of the privileges of a criminal; which are a right to a public investigation according to the rules of evidence adopted by free and enlightened communities; a right to be heard before condemnation; and the right to be presumed innocent of having property subject to taxation until the fact is ascertained otherwise by legal proof. But under the existing tax laws, we do not accord to the tax-payer

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only ordinary perception for recognition, is in the nature of instruments or subjects of commerce between States and nations; such as railroad cars, ships, steamboats, immense stocks of raw or manufactured products accumulated in store for the sole purpose of movement. What shall be the *situs* of all these things for assessment? If actual location is to be determinative, then a product of grain or merchandise, which, in movement for a market or conversion into other forms, may happen to be in Illinois in April, in Ohio or Massachusetts in May, in New York in July, in New Jersey in August, and in Connecticut in October, will be liable to five separate taxes in one and the same year; for the laws of each of these States

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the privileges of a criminal; for no tax can be assessed on a large proportion of the personal property of the State, according to any rules of legal evidence that any common law court would adopt. No assessor, under the laws of New York, in assessing personal property can act judicially. The law gives him no power to obtain legal testimony of a character that is admissible in a court; he must act the part of an arbitrary despot against an inculpated tax-payer, or not act at all, and his conclusions for acting must be reached at best by the testimony of those who have no means of knowing anything, in a legal sense, about the subject-matter under investigation. It seems clear, therefore, that any attempt to tax without legal evidence, is an act of usurpation or despotism, wholly antagonistic to the principles of a free government, and that it is a mockery to characterize such acts as, in any sense, judicial proceedings.

"Nor does the right to reduce or regulate the assessment by the oath of the tax-payer relieve the law in any degree of its unequal and despotic character; for every individual holding public office in the United States knows that oaths as a guarantee of truth in respect to official statements have ceased to be of any value. The assessments made according to the oaths of parties, furthermore, are not made according to legal evidence, upon examination and proofs; but according to the will and secret caprice of each tax-payer, instigated by his selfishness, and the natural depravity of human nature. Each tax-payer, under the present rule, becomes therefore the interpreter, not only of the law, but of the fact, and makes a secret interpretation of both, and we have as many interpreters of the law as there are numbers of tax-payers; and also an indefinite multiplicity of assessors; for each person who unfairly reduces his own assessment arbitrarily assesses thereby some other of the community for the difference.

"Could or would any people apply the same rules for the collection of debts? Is there any one who has so much confidence in human nature that he will propose a law, that a person who is sued shall be discharged from all claims of indebtedness if he will make oath, interpreting both the law and the fact himself, that he owes the claimant nothing? Is it believed, that under tariff laws, the government could get sufficient revenue to pay for its collections, if the importer was permitted to offset debts against the value of his goods; or if the law was peremptory that his oath alone should be given, and that there should be no legal examination, inspection or proof of the value or character of the importations?" — *Second Report Commissioners of New York*, 1873.

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require their assessors to return for taxation all such property as at the periods mentioned may be actually within the sovereignty and jurisdiction of the taxing authority. On the other hand, if the fiction of law that personal property follows its owner is to govern, then all such property may be taxed *where it is not*, and where no expense has been incurred by the locality for its protection, and be exempt from taxation *in the place where it actually is*, and where it shares in the benefits that flow from the protective expenditures, — police, fire department, etc., — which are incident and necessary to the locality. And in proof that such a supposition, which seems on its face to be an absurdity, is a matter of constant experience under our so-called American system, it may be stated that at present, as for some years past, Houghton & Co., the well-known publishers, are regularly taxed in Cambridge, Mass., the place of their residence, for so much of their stock in trade as is kept in store and permanently employed in business in New York City, although it is admitted that the same tangible, visible property is at the same time regularly taxed by the New York authorities; and furthermore, that when an appeal against this injustice was made to the Massachusetts Tax Commissioners, the decision rendered was, that under existing Massachusetts laws, the plundered tax-payer could have no remedy, except by change of business or change of (State) residence. Reference may be also made to the reports of the Commissioners of Taxes for New York City, which admit that cases are continually occurring in that city where of two separate but corresponding and contiguous lots of merchandise, one will be taxed and the other exempt from taxation according as their owners are respectively residents or non-residents of the municipality. Again, if a foreign banker subscribes to any of our State or municipal loans, the bonds or other evidences of indebtedness which he receives in exchange for his money are exempt from taxation by reason of his non-residence; but if a resident widow, orphan, or maimed soldier, be moved by the desire for security to purchase a little of the same loan, the small rate of interest which such investments generally carry will be made still smaller, to all such persons, by reason of an annual tax of from one per cent. to two, three, or a greater percentage imposed

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on the holders for the simple reason that they are residents; although the protection afforded to the latter is in no degree different from or greater than that afforded to their more fortunate and rival foreign competitors, who reside where such taxes are not imposed; all of which is equivalent to saying officially that whenever an American loan, particularly desirable for trust investments, is created, it shall be sacredly reserved for foreigners, or that bad portion of our own citizens who have no scruples about cheating the assessors. Local subscriptions to local indebtedness, with the increase of interest in the locality which would necessarily follow, are therefore discouraged, while to the American citizen residence is made an offence and coupled with a penalty.

As a further help to reasoning on this subject, it is also important to call attention here to the circumstance, that the distinction between real and personal property is to a very great extent, an artificial and not a natural distinction. Thus, for example, shares in the national debt of France (as well as stock in the Bank of France),—instrumentalities which in the United States would be regarded as personal property in its most typical form,—may by French law be regarded as real estate, and as such administered upon. Again, before emancipation in the United States, slaves (which by the Federal Constitution were recognized as persons) were in some of the States declared by law to be real estate; and to-day in Wisconsin, the one species of property which is especially typical of mobility, and is of no value apart from capability of motion, namely, the rolling stock of railroads, is also by law made real estate. Equally nice is the distinction in the case of machinery. Unattached or movable, it is personal property; screwed or fastened permanently to the floor or wall, it becomes real estate. The attempt, therefore, to recognize in a system of laws a distinction which is purely arbitrary, and which the thirty-eight sovereign States of the Union may alter at pleasure,* is very likely to give a

* With regard to the statute law on the subject of taxation, "it is," says Mr. Hilliard, in the preface to his recent work, "Law of Taxation," "as voluminous as the constitutional provisions are few and concise. With a general similarity, the laws of the different States are very diverse; and so numerous and frequent are the statutory changes, that the author disclaims any responsibility for the implied statement, that the law of any particular State, however recent, is now in force."

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general result somewhat akin to that obtained by the artist, who in painting a landscape selected a cow as his fixed point of perspective. If the cow had remained quiet, the picture might have been satisfactory, but as it was, the details were not harmonious.

Consideration is next asked to this point: To tax the instrumentalities or objects of commerce in one locality, and to exempt the same from all direct taxation in another, will clearly not permit the former to enter a common market on an equal basis for competition with the latter. And yet this unjust discrimination is exactly what does result from the attempt of the majority of the States in the Federal Union to tax all such instrumentalities or objects under the general head of personal property, and the exemption of the same classes of property from any corresponding assessment in the State of Pennsylvania, in the British Provinces of North America, and in all foreign countries with which the United States enter into extensive commercial intercourse and competition. Boards of trade and commercial conventions may pass "deploring" resolutions concerning the decay of American commerce, and committees of Congress may continue to investigate the same subject, but so long as ships engaged in the carrying trade on the free ocean, and owned in Montreal, Quebec, St. John's, England, France, Germany, and Holland, are not directly taxed, and ships engaged in competition in the same business and owned in Portland, Boston, New York, Baltimore, New Orleans, and San Francisco, are taxed — and that heavily — commerce will incline to walk in the paths which are made easy and profitable to it. "The difference in the cost of a single penny in laying down grain at Liverpool," says the President of the New York Produce Exchange, "may determine the question whether millions of bushels shall be supplied by this country, or shall be drawn from the ample fields of Hungary or Southern Russia." *

And finally, in regard to so much of the so-called personal property as is visible and tangible, and not included under any of the heads above mentioned; such as articles of personal adornment, clothing, furniture, works of art, musical instru-

* Letter of Franklin Edson, President of the New York Produce Exchange, on the Reduction of Canal Tolls, April 17, 1875.

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ments, books, &c., shall we assume that we have here a class of articles on which it is desirable to levy taxes? Of course the popular answer will be most decidedly in the affirmative; for are not all these objects, it may be asked, the very ones best fitted to sustain taxation, and are they not in great part also luxuries rather than necessities? But how, it may be rejoined, are you going to tax them? for it is reasonable to suppose that if they are to be taxed, it is to be by a system that works equitably, and not by a system which by taxing A, and letting B, C, and D escape, brings the law into contempt, and by making the sense of the commission of a wrong on the part of the State the excuse for the commission of another wrong on the part of the individual, gradually undermines the morality of a community that does not wish to be dishonest. Probably the advocate of the infinitesimal system will continue to answer, "Let a law be made which will compel every person possessed of such description of property to make and hand in to the assessors a schedule, and certify to its correctness in respect to items and value by oath." But such substantially is already the law in most of the States, and its observance and execution amounts to nothing. Thus in Ohio the law subjects to taxation all visible property above fifty dollars in value, without any offset of debts; and yet the official reports of the auditor of the State show that the total number of annual assessments in Ohio do not amount to *one tenth* of the number of the adult population; or, what is the same thing, that only one person in ten of the adult population of this great and rich State of Ohio has any property whatever — real or personal — in excess of fifty dollars, which the eye of the law can discover; although investigation will show that it is impossible for a person to dress respectably or live decently, outside of a poor-house, who has not always at least double this amount of property in his possession. Every intelligent assessor in Ohio, when questioned in respect to the law, will answer, that it cannot be executed with even an approximation to exactness, and that a serious attempt to execute it would cause a political revolution; and yet such is the strength of popular prejudice, that any attempt to repeal this law would probably be unsuc-

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cessful. Some years ago a commission reported to the legislature of Illinois a new scheme of taxation, in which among other things they proposed that every woman of "full age and sound mind," — either directly or by her representative, — should annually return to the assessors a statement of the value of all the jewelry, household furniture, and "all other property" in her possession; but their recommendations never received any higher consideration from the public than that of being denounced and laughed at. And most naturally; for what woman would tell her age, or the amount and value of her jewelry and finery, and more especially to a stranger, invested with a brief official authority as an assessor, and serving the State at the rate of two dollars per day? In short, no people — men no more than women — can or will endure the vexing, impertinent, personal inquisition necessary to carry out a system of taxation based on the principle that in order to tax equitably it is necessary to assess everything; and yet unless such a system is carried out in all its details, what becomes of the equality claimed for it?

So much, then, for the almost insuperable difficulties having their origin in the nature of things growing out of the correlations of modern civilization, which always must be attendant on the attempt of any sovereignty to tax everything over which it has dominion or jurisdiction. Let us next consider how the situation in the United States in respect to local taxation, already thus made difficult by reason of natural causes, has been further hedged round as it were with embarrassments by the action of the Federal Courts.

In the first place, we have repeated decisions of the U. S. Supreme Court (*McCulloch* v. *Maryland*, 4 Wheaton, 451; *Weston* v. *City of Charleston*, 2 Peters, 449), that all agencies or instrumentalities of the Federal government of every name and nature, are exempt from State taxation; and a law of Congress (June 30, 1864), which specially makes applicable what the Supreme Court had before declared to be constitutional law, to a certain class of Federal instrumentalities, namely, all representatives of value, of whatever name or denomination issued under act of Congress, — bonds, coupons, national currency, U. S. notes, treasury notes, fractional cur-

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rency, certificates of indebtedness, etc., etc. Here then, making allowance on the one hand for so much of the national debt as has passed into the possession of foreigners, and on the other for the circumstance that what of it remains in the possession of our own citizens is undoubtedly made the agency whereby at least an equal amount of other property — surplus of savings-banks, and assets of fire and life insurance companies, etc.,— is successfully enabled to evade primary taxation, we have probably one sixth of the personal property of the country effectually placed beyond the reach of State assessment. There still lingers a feeling among the masses, that if Congress would so enact, this exemption of United States instrumentalities from taxation need not be; but if any person will carefully consider the words of Chief Justice Marshall in passing upon this question, namely, "*That the power to tax involves the power to destroy*," and that if the right exists to tax at all "*it is a right which in its nature acknowledges no limits*," he will probably come to the conclusion that Congress could not delegate to the States this power of impairing Federal sovereignty if it would, and should not if it could.*

Second. We have a denial to the States of the power to tax by direct assessment, license, or stamps, imported goods in their original packages. It took two decisions of the U. S. Supreme Court to restrain the Massachusetts tax officials from assuming and exercising this power. The first, made many years ago, in the case of *Brown* v. *Maryland*, was regarded as

* "In the celebrated case of McCulloch *v.* Maryland (4 Wheaton), when the question involved was the right of the State to impose taxes upon the operations within its limits of the Bank of the United States, created by authority of Congress, Chief Justice Marshall used the following language: "If we apply the principle for which the State of Maryland contends to the Constitution generally, we shall find it capable of changing totally the character of that instrument. We shall find it capable of arresting all the measures of the government, and of prostrating it at the foot of the States. The American people have declared their Constitution and the laws made in pursuance thereof, to be supreme; but this principle would transfer the supremacy, in fact, to the States. If the States may tax one instrument employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax patent rights; they may tax the papers of the custom-house; they may tax judicial process; they may tax all the means employed by the government, to an excess which would defeat all the ends of government. This was not intended by the American people. They did not design to make their government dependent on the States."

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of no account; but the second, given in the case of *Austin* v. *Low*, in 1872, admitted of no misinterpretation. Yet, so reluctant were the Boston assessors to have the unlimited power necessary to enforce unlimited taxation abridged in any degree that they proposed to petition Congress to nullify the Court decisions, by enacting that the States might tax imported goods like general merchandise if they would; unmindful of the fact that the tenth section of the first article of the Federal Constitution expressly forbids Congress from making any such enactment.*

Third. We have the fiction of law, "that personal property follows the owner" for purposes of taxation, broken in upon in respect to all personal property represented by ships, by the decisions of the U. S. Supreme Court (*St. Louis* v. *Ferry Co.*, 11 Wallace; and *Hayes* v. *Pacific Mail Co.*, 17 Howard), that the *situs* of a vessel for State taxation is only at the home port where she is owned and registered, and not where the vessel or owners may happen to be.

Fourth. The decision of the U. S. Supreme Court (*State Tax on Foreign-held Bonds*, 18 Wallace), that public securities have a situs where found, and cannot be elsewhere regarded as property subject to taxation, pretty effectually exempts from State taxation all negotiable instruments, — State, municipal, railroad, and other corporate bonds; — inasmuch as to remove such property from the territory of a State, at the same time removes it for all purposes from the State's jurisdiction; as "*the tax laws of the State*," according to the Court, "*can have no extra-territorial operation.*"

Fifth. In the case of *Tappan* v. *Merchants' National Bank* (19 Wallace) the U. S. Supreme Court (1873) decided in the case of shares in National Banks (and inferentially in respect to shares in all other similar corporate bodies), that when a citizen of one State purchases such evidences of property in another State "*his money invested in the shares is withdrawn from taxation under the authority of the State in which he resides*,

* "No State shall, without the consent of Congress, lay any imposts, or duties, on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States." — *Constitution of the United States, Section* 10, *Article* 1.

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and submitted to the taxing power of the State where, in contemplation of the law, his investment is located." And in conformity with, and following this decision, the Supreme Court of New York has since held (1875) that certificates owned by a resident of New York, of stock in corporations created by and under the laws of other States "are not in themselves property" in New York, but "simply representatives of capital or property employed in business in other States, and therefore not taxable in New York."*

In addition to these decisions of our highest tribunal, which irrevocably break in upon and demolish so much of the old practice of local taxation in the States, other points involving equally radical innovations are certain to come up for adjudication at no distant day; such, for example, as the limitation on the taxing powers of the States created by that clause of the Fourteenth Amendment of the Constitution of the United States, "*Nor shall any State deprive any person of life, liberty, or property without due process of law*"; or that other clause, "*Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State*," the future application of which to the limitation of taxation by the States was foreshadowed in the celebrated case of *Green* v. *Van Buskirk* (5 Wallace, 307); or the practical application of the decision in the same direction by the United States Supreme Court in the case of the *State Freight Tax* (15 Wallace), "That the constitutionality or unconstitutionality of a State tax is to be determined, not by the form or agency through which it is to be collected, but by the subject upon which the burden is laid"; and also the question of extra-territorial taxation involved in the assessment of inter-state contracts as property, and other similar questions. It is, of course, impossible to predict what will be at first affirmed to be Constitutional law in these future cases; but it can be certainly affirmed that the spirit of the age, and the necessity of freeing all inter-state exchange and commerce from all impediments will sooner or later demand that freedom in the highest sense shall be the rule governing the

* The stocks directly involved in this decision were the Chicago, Rock Island, and Pacific; Milwaukee and St. Paul; St. Louis, Alton, and Terre Haute, and the Wilkesbarre Coal; but the principle applies of course to stocks of all foreign corporations held by citizens of New York.

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movement of all property equally with the movement of all persons.

Such then is an imperfect exhibit of the antiquated, accidental, unjust, demoralizing, and absurd method, — not worthy of being called a system, — adopted by all the States of the Federal Union with a single exception, for raising annually from the people between two hundred and fifty and three hundred millions of dollars, — a burden which twenty years ago would have seemed impossible for the nation to sustain in addition to meeting the requirements for Federal expenditure.*

* To show that this characterization has in it nothing of exaggeration, attention is here asked to the following novel method by which Hon. George H. Andrews, one of the Commissioners of Taxes for the City of New York, strikingly contrasted and illustrated in 1874 to a Committee of the Legislature, the inequalities and incongruities of the existing tax laws of New York.

A has $100,000	of	imported goods,	and is	*exempt.*
B	"	miscellaneous goods,	"	taxed.
C	"	goods consigned,	"	*exempt.*
D	"	goods owned,	"	taxed.
E	"	goods manufactured in New Jersey,	"	*exempt.*
F	"	" in city,	"	taxed.
G	"	goods for which he borrowed capital on United States Bonds,	"	*exempt.*
H	"	goods which he sold United States Bonds to pay for,	"	taxed.
I	"	in ships plying from this port, but registered in Boston,	"	*exempt.*
J	"	in ships plying in the Pacific, but registered here,	"	taxed.
K	"	in mortgages on New Jersey property, interest paid in Jersey City, and mortgages deposited there,	"	*exempt.*
L	"	in mortgages on city property,	"	taxed.
M	"	money in his pocket,	"	*exempt.*
N	"	" bank,	"	taxed.
O	"	certified deposit in Sub-Treasury,	"	*exempt.*
P	"	" bank,	"	taxed.
Q	"	specie in the Assay Office,	"	*exempt.*
R	"	" his safe,	"	taxed.
S	"	check on United States Treasury,	"	*exempt.*
T	"	" bank,	"	taxed.
U	"	Treasury notes,	"	*exempt.*
V	"	Promissory notes,	"	taxed.
W	"	of United States Bonds,	"	*exempt.*
X	"	of State or City Bonds,	"	taxed.
Y	"	in certificate of indebtedness of United States,	"	*exempt.*
Z	"	" " a corporation,	"	taxed.

"And if the alphabet had been longer my statement had been stronger."

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That the system is a success in the sense that it is effective for raising the required revenue must be admitted; but the old Asiatic system, which limited its exactions to a few individuals, and sent the public executioner to keep company with the collector, was equally a success, and far more simple and economical. That the existing system has also many defenders and advocates must also be further admitted; but this phenomenon admits of explanation, partially on the principle, that in all cases of fraud upon the public, it is only necessary to get up a *quantum sufficit* of any wrong, to make it certain that the abomination will powerfully defend itself; and partially for a reason similar to that which induces the Esquimaux and the Guinea negro, who have never known anything different from their natural surroundings, to respectively imagine their own country and climate to be superior to any other.

On the other hand it is undoubtedly a fact, — and one most encouraging, — that by almost all thoughtful men, who have felt sufficient interest in the subject of local taxation to examine it in the light of the recent reports, investigations, and court decisions, the conclusion has been arrived at that the American system as it exists at present in the majority of the States is too imperfect and too adverse to the general public interests to be either defended or allowed to continue for any great length of time without radical changes; and yet at the same time this other fact is equally certain, that out of the very considerable number thus convinced,—which within the knowledge of the writer includes many leading members of the judiciary, of the bar, and of the corps of local fiscal administrators in all parts of the country, — very few have made progress enough in their investigations and reasoning to come to any definite opinion, either as to what new plan should be at once substituted for the existing system, or in what gradual manner it is practicable or expedient to begin the work of reform. "If we were to commence *de novo*," writes an eminent member of the bar of one of the New England States, "I would oppose most earnestly the adoption of any system of local taxation analogous to that which we have at present; but in view of existing precedents, prejudices, and the stereotyped way of doing things, I hesitate about attempting radical innovations."

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An ex-chief justice of one of the leading States of the West, under date of December, 1875, also thus expresses himself, "Our tax system, I was going to say, is as bad as possible; but really we have no system. Our tax laws are mainly bad. Federal taxation, to a large extent, is laid for private purposes, and public offices and public sentiment is debauched by it. What can the courts do to better this condition of things? They may punish a rascal now and then, but bad taxation is apt to corrupt the officers of justice, including in some instances even the judges. On the other hand, if reformers are to address themselves to State Legislatures, what do they encounter? 1st. A greedy hoard of leeches who would have the tax laws shaped to benefit themselves and not the country. 2d. A majority of the legislature with so little knowledge of the principles of taxation, that they willingly present the breasts of themselves and their constituents for the leeches to fasten upon, under the pleasing delusion that life blood is to be imparted by them instead of being drawn away. And these are not all the difficulties, for much of the legislation that is inspired only by correct motives is vicious because the subject is not understood by those who would deal with it."

Under such a condition of things one inquiry which naturally suggests itself is: Are there any precedents or examples in the past, of the removal or reform of national systems of taxation which had become oppressive, from the consideration of which any profit can be gained? And in answer it may be said, that there are at least two examples, in which the historical details of experience, although not as yet specially gathered up and recorded, can be traced with undoubted accuracy; namely, the experiences of England and of France. In the latter country, feudalism, previous to the revolution of 1789, had come to find its expression almost exclusively in the claims on the part of the various and multiplied representatives of authority — nobility and clergy — to regulate taxation — in respect to both imposition and exemption. Taxation was, therefore, everywhere, in the highest degree arbitrary; the infinitesimal, inquisitorial, dooming, penalty system, was carried out in perfection; feudal personal services were compounded for frequent direct and indirect periodical taxes,

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payable in money or commodities; and the only rule of practice, which in different districts could prefer any claim to uniformity, was the rule of inequality of assessment and harshness and cruelty in collection. On nearly every estate or seigniory, in addition to a great variety of direct taxes on persons and property, the various operations involved in production and consumption were as far as possible made the occasion for new and repeated assessments. The tenants, or vassals, were bound to grind their corn at the mill of the seignior only; to bake their bread exclusively in his ovens, and press their grapes and apples exclusively at his presses, and for every such industrial conversion a toll or tithe was collected. Movements of persons and property from one town or district to another, always involved taxation;* and every sale or transfer of property carried with it a fine, to the extent of one-eighth, and sometimes one-sixth of the entire equivalent received in consideration. Arthur Young, who travelled in France in 1787–89, says that even at that time, the very terms used to designate the taxes imposed on the peasantry of France, were in many instances untranslatable into English; and from a long list of such terms as he has recorded very few can be found defined in any ordinary French lexicon. In order, however, in some degree to satisfy curiosity as to the nature of these abominations, it may be mentioned, that one of the local taxes of Brittany, which remained in force down to 1789, and was known as the "*silence des grenouilles*" was a money payment, in lieu of an ancient feudal obligation

* In Massachusetts and other States, which adopt the fiction of law, that personal property cannot be separated from its owner, visible, tangible chattels, as cattle and merchandise, etc., are liable to be taxed successively in one and the same year; first in the States where they actually are and by whose laws they are protected, and again where the owner resides, if such residence be in a different State. But in France, under the ancient *régime*, they improved on this, by holding that a man (at least for a time), could not separate himself from a residence once adopted, but remained there for taxation, although he might have actually and permanently left it. Accordingly, therefore, they taxed all persons leaving their domiciles for a certain time in the seat of their former abode, — namely, farmers and laborers for one year, and all other taxpayers for two years, provided the parish to which they removed was within the same district; but if otherwise, then farmers were to pay for two years, and all other persons for three years, so that a man under all circumstances in France, previous to 1789, would have had to pay double taxes, for from one to three years, as a penalty for changing his dwelling.

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incumbent on the residents of marshy districts, to keep the frogs still, by beating the waters, that the lady of the seignior, "when she lies in," might not be disturbed; while another exaction, even more outrageous, was the tax known as "*cuissage*," which was paid to the seignior on the occasion of every marriage on his estates, as a substitute for his ancient and formerly acknowledged right to the single possession before marriage of the person of every female, the daughter of any of his serfs or more dependent vassals.

Out of such abuses the only possible issues were national death or radical reforms; and the latter came in the form of revolution. And to what extent the grievances of taxation were the causes of the Revolution is indicated by the circumstance, that one of the very first acts of the National Assembly of 1789 was to repeal and utterly wipe from the statute book all inquisitorial taxes of every nature and character, as well as all "prescription of oaths"; both being stigmatized in the report of the Committee as inconsistent with the maintenance of a free people. And so deep and lasting, moreover, has been the terrible lesson of past tax-experience to the French people, that from 1789 to the present time,—all through the financial embarrassments consequent on the wars of the first Napoleon, and more recently, on those resulting from the German invasion,—there has not been so much as a popular thought or suggestion of adopting any system for raising internal or local revenues, which in any degree approximates to the existing American system, or to any system involving personal inquisition for its execution.

What local taxation was in England in the time of Edward II. has been already indicated. But how thoroughly the governing classes, at least in England, had in the time of William and Mary, come to understand the nature and demoralizing influences of inquisitorial taxation, and how prompt they were to abate popular grievances, which in France were allowed to accumulate, is shown by the act passed by the House of Commons in 1698 for the abolition of what was known as the "*hearth money*" (a tax of two shillings upon every hearth, first imposed in the reign of Charles II.), an extract from the preamble of which reads as follows: "Whereas, his Majesty

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having been informed, that the revenue of hearth money was grievous to the people; and whereas the Commons do find *that the said revenue cannot be regulated*, but that it will occasion many difficulties and questions; and that it is, in itself, not only a great oppression to the poorer sort, *but a badge of slavery upon the whole people; exposing every man's house to be entered into* and searched at pleasure by persons unknown to him; therefore," etc., etc. And as a further illustration of how early English freemen came to perceive the just limitations of the taxing power, and to abhor the exercise of inquisitorial and arbitrary proceedings, it may be mentioned that one of the earliest laws of the Massachusetts Colony was that "*no man shall be rated for any estate or revenue he hath in England, or in any foreign parts, till it be transported thither*," thereby plainly recognizing the principle laid down by the United States Supreme Court nearly two hundred and fifty years afterwards, that "*property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised*"; and also, that in the first provincial codes of Pennsylvania, framed by Penn and his associates, special care was taken to confine taxation to land and a very few articles of personal property of a visible character; and to exempt from taxation merchandise and ships, and all representatives of property, as debts, bills and accounts, easy of concealment. During the eighteenth and nineteenth centuries, down to 1842, reforms in taxation in Great Britain were very gradual, and in not a few instances the result of court decisions rather than of action by Parliament; the tax on windows, imposed in 1695, and which was advocated at the time on the ground that the assessor might determine the amount of the tax without passing the threshold of any house, remaining in force until 1851. Since 1842, however, reform in every department of British taxation has been rapid and intelligent; and although the British system as it exists to-day is the subject of much domestic complaint — as all systems that can possibly be devised ever will be — it is nevertheless probably unequalled for simplicity, for efficiency in administration — all machinery of oaths, affidavits, listings and inquisitions (as in France) being wholly discarded, in-

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come tax excepted; and for the ease and economy with which it is made the instrumentality for collecting enormous annual revenues from comparatively few objects; and all this with an entire exemption of a very large portion of the population from any direct contact with the tax assessors and collectors.*

What has already been effected, and what further may be expected in the sphere of tax reform in this country through the agency of the Federal Courts, i. e. in defining and limiting the powers of the States, and in making operative the 1st section of Article 4, and the Fourteenth Amendment of the Constitution of the United States against the exercise of arbitrary power, has been already briefly pointed out. But beyond the action of the courts, which are naturally slow, conservative and unwilling even to appear to invade the province of legislation, no radical improvement in our existing local tax systems as the result of legislative action can be expected until the general public, and more especially that part of it which makes and administers the laws, in some way obtain more definite and intelligent ideas than they now possess respecting the nature, object, and scope of taxation, and especially concerning the manner in which taxation once imposed diffuses itself and becomes a real and ultimate burden on objects far other than those which primarily sustain it.

And one of the first and most important things which it is desirable that the public in this educating process should be brought to clearly comprehend (and which, absurd as the averment may seem), they certainly do not now comprehend, is, that *nothing cannot be something;* or, in other words, that *property is a physical actuality*, which has become valuable,

* "The study of the subject leads us to the conclusion, that the taxation of the United Kingdom is the most scientific, the most economical in collection, and the least onerous to the people of any in Europe. The Englishman pays no poll tax, no land tax, no salt tax, no taxes on any of the necessaries of life, except it be on beer, on tea, and sugar." Sugar is now exempt. "Our taxes on successions and transfers of property are lower than those of France. Our customs are levied on five or six articles, our income tax chiefly affects those who possess realized property, our excise is a tax justly levied on the vices or indulgences of the people. We question, therefore, whether any country ever suffered less than England now does from the burden of taxation."—*Edinburgh Review*, April, 1870, p. 201.

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or property, through the application of some form of labor; and therefore, that a title to property, or a representative of property can no more be property than a shadow can be a substance. And if this be true, then it would seem to follow of necessity that "the act of making debts, bonds, contracts, verbal or written, notes, book-accounts, mortgages, warehouse-receipts, titles, certificates of stock, or any form of saleable and transferable rights, is not a creation or production of any new property, but simply an exchange by contract or operation of law of the rights or titles of parties in pre-existing property, and that any tax on any of these rights or titles is only another form of burdening the property which is the subject of the rights or titles."—*Isaac Sherman.* To which it may be further added, that if the tax is levied on any of these representatives or titles in any other State than the one where the property is located, it would clearly seem to be an extra-territorial tax, and therefore, by the decision of the U. S. Supreme Court, unconstitutional; and if levied on rights or titles within the same jurisdiction as the property itself, which is there also taxed, it is simply double taxation on one and the same thing, or an odious discrimination against property which may happen to be covered by such titles.

On the other hand let us consider for a moment the converse of this proposition, namely, *that titles are property, and as such ought not to be exempted from taxation.* If this is so, then it would seem to follow that, by making titles, we can make property; and that when a man mortgages his farm for ten thousand dollars, the community have ten thousand dollars' worth of real estate, and ten thousand dollars' worth of personal property, when before the execution of the mortgage there was only the specified value of the real estate. Again, if the title is the property, then either the actuality is not property where it exists, or else we have two things occupying the same place at the same time.

And here another illustration may be given of the fact already referred to; that without specific legislation, important reforms in the principles and methods of local taxation are being effected through the agency of the courts; for while this article was in the course of preparation, the very subject

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under discussion (are titles and credits property, and as such proper subjects for taxation?) came up before the Supreme Court of the State of California for decision, and was decided almost unanimously — only one out of five dissenting — in accordance with the views above taken. The Constitution of California, in common with the Constitutions of most of the other States, provides "that taxation shall be equal and uniform throughout the State," and "that all property in this State shall be taxed in proportion to its value, to be ascertained by law." The Hibernia Savings and Loan Society of San Francisco resisted, under these constitutional provisions, the taxation of mortgages given to secure the loan of property, on the ground that to tax a certain property, and then to tax a mortgage on it, which mortgage is not in itself property, but like a deed or lease, is a species of conveyance or acknowledgment of a conditional interest or right in the property, was not equal and uniform taxation, but an unequal and double tax on the property mortgaged. The Court met the case fairly and squarely, the language of the Chief Justice (Wallace) being reported as follows: "Mere credits are a false quantity in ascertaining the sum of wealth which is subject to taxation as property, and in so far as that sum is attempted to be increased by the addition of those credits, property taxation based thereon is not only merely fanciful, but necessarily the unconstitutional imposition of an additional tax upon a portion of the property already once taxed." That the practical effect of the taxation of loans and credits is to impose a double tax on the debtor has never been disputed by any who have taken pains to investigate the subject, but as the point is one that even tax-officials and law-makers generally do not admit, if indeed they comprehend it, the following further language of the Chief Justice is worthy of attention. He says: —

"The taxation thus imposed nominally upon credits having resulted in the double taxation of the money, the additional tax must of course be paid by some one. And here all human experience, as well as the settled theories of finance concur that it is not the lender who pays, but the borrower. The borrower is the consumer. The interest which he pays to the lender is the prime cost of the delay for which he has contracted. If the government, by the imposition of addition-

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al taxes, increase the cost, the borrower, being the consumer, must pay for it."

There is another portion of this California decision that should not be overlooked. The California code, in defining personal property as a subject for taxation, in common with the tax codes of most of the other States, specified "money, goods, chattels, evidences of debt, and things in action" as personal property, which definition would, at first sight, certainly seem to include mortgages as proper subjects for State taxation. But the Court, through Justice McKinstry, who delivered its opinion (the Chief Justice's opinion being in concurrence), referred to this clause of the code as "an attempt" merely to include *choses in action* in the definition of property, and declared that to make it the duty of assessors "to assess all things in action is to give a construction to the Constitution which must lead to the grossest absurdities." He then enumerates at length many of the absurdities * to which this construction would tend, and concludes by affirming it to be a princi-

* "Supposing that the necessities of government required a tax of one hundred per cent on all values, or, what would be the result of such a tax, an appropriation of all the property in the State, — it is plain that the State would receive no benefit from evidences of debt due by some of her citizens to others, and payable out of the tangible property which the State had already taken."

"The legislature may declare that a cause of action shall be taxed, but a cause in action cannot pay the tax; and this because it has, and can have, no value independent of the tangible wealth, out of which it may be satisfied."

"It may not be possible in every case to show that the debtor has paid the tax assessed to his creditor. But it admits of mathematical demonstration, — if other property in the State has been assessed at its value, — that the money which shall ultimately satisfy the debt (if it ever is satisfied) has paid the tax. If it were practicable to assess all the property in the State at the same moment of time, it would be clear to every mind that an assessment of a credit was an attempt to transfer to it a value elsewhere assessed. If a debtor was found to be the owner of one thousand dollars, and is assessed for that sum, and his creditor is found to be the owner of his note for one thousand dollars, and is assessed for a like sum; and if the day after the visit of the assessor to the creditor the debtor shall pay his note, it is clear that this same value has been twice taxed; since the debtor has parted with his money, and received only that which is certainly not taxable property in his hands, and which can never afterwards be assessed. When a debtor pays his debt, he does not abstract or destroy any portion of the taxable property of the State; the aggregate of values remains the same." — *Opinion of Justice McKinstry.*

Suppose, "were such a thing possible, that the entire tax-rolls exhibited nothing but indebtedness. Taxation under such circumstances would of course be wholly fanciful, as having no actual basis for its exercise." — *Opinion of Chief Justice Wallace.*

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ple in taxation, that "*it is property in possession, or enjoyment, and not merely in right, which must ultimately pay every tax.*"

California, therefore, in this decision leads off in a matter of tax reform, which every other State sooner or later must adopt, if it would give to its citizens the maximum advantage to be derived from the obtaining and employment of credits.

Another point preliminary to reform, in respect to which it is important that there should be a clear understanding on the part of the public is, that there is a broad and philosophical distinction between "taxation" and "arbitrary taking." It is often assumed that a State, because of its sovereignty may, through form of law and delegated authority, deal with the persons and property of its subjects as it may see fit; and repugnant as is this assumption to the principles which are assumed to constitute the foundation of all free government, it is not to be denied that previous to the adoption of the Fourteenth Amendment, it would be difficult to show what restraint existed upon the complete sovereignty of the States of the Federal Union over persons and property within their unquestioned jurisdiction; the right to hold a certain class of their population in slavery, and the right to take private property for public purposes without making any compensation (*Baron* v. *Mayor of Baltimore*, 7 Peters, p. 243: 1833), being illustrations of the exercise of such arbitrary powers in the utmost extreme. But the most recent expression of opinion of the U. S. Supreme Court on this point, as given in the case of *Loan Association* v. *Topeka* (20 Wallace, 658), is as follows: "There is no such thing in the theory of our government, State or National, as unlimited power in any of these branches. The executive, the legislative, and the judicial departments, are all of limited and defined powers. There are limitations of power which arise out of the essential nature of all free governments, implied reservations of individual rights, without which the social compact could not exist, and which are respected by all free governments entitled to the name. Among these is the limitation of the right of taxation."

An inquiry now as to the nature and extent of this limitation in the case of free governments (for the court further added in the above case, that "a government which held the

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lives, liberty, and *property* of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is but a despotism") may be answered (at least in part) by saying, that from the time of Montesquieu down to the time of the Report of the Massachusetts Tax Commissioners in 1875, no writer of repute (jurist or economist) has ever taken any other ground, than that *taxes are the compensation which persons or property pay the State for protection*, or in other words, that taxation is the correlative of protection; and that the act of a State, in levying upon that which its processes cannot reach — persons or property — and which, therefore it cannot protect, is not entitled to the name of "taxation," but is simply arbitrary taking or spoliation. Taxation, to quote from only one recent law writer, "is in any view taking private property for public use; and it cannot be so taken without an equivalent, both as to the government or the citizens. It is not competent to convert private property to public use, by way of taxation, and without compensation, any more than by any other mode."—*Redfield.* That the principle as thus stated is the supreme law of the land, so far as the U. S. Supreme Court can make it so, must be further apparent from the following extracts from its decisions, which in substance have been again and again repeated: —

"Governments are organized for the protection of persons and property, and the expenses of the protection may very properly be apportioned among the persons protected, according to the value of their property protected." — *Chief Justice Waite, Tappan* v. *Merchants' Bank*, 18 Wallace.

"Where there is no protection, there can be no claim to allegiance or obedience." — *Justice Story, United States* v. *Rice*, 4 Wheaton, 246.

"It is an eternal principle of justice, that jurisdiction cannot be justly exercised by a state over property not within the reach of its process; that is, property which it cannot protect." — *Miles* v. *Duryee*, 7 Cranch, 481.

And if these citations in the way of authority are not sufficient to establish the principle in question, we have the Fourteenth Amendment of the United States Constitution, which prohibits any State from depriving any person of property "without due process of law"; and taxation without jurisdiction, and therefore without the possibility of the correlative

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return of any protection as compensation, is, it would seem, an arbitrary exaction on property, and not "due process of law"; and also not giving that full faith to the public acts and judicial proceedings of other States required by a previous clause of the Constitution. It must, however, be stated, that by many this reasoning is not regarded as conclusive; and more especially is this the case in Massachusetts, which taxes her citizens in respect to visible, tangible property, acknowledged to be within the territory and jurisdiction of other States. In the recent report made by the commission appointed by the legislature of Massachusetts to inquire into the expediency of revising the tax-laws of that State, the commissioners at the outset evidently felt impressed with a feeling that they must vindicate the practice of their State in this particular, and that unless they succeeded in doing so, the whole theory of arbitrary, infinitesimal taxation, of whose continuance they are advocates, might be seriously broken in upon. They accordingly set about it in the following amusing manner. With the Declaration of Independence before them, maintaining it to be in the nature of a self-evident truth, that "all men are endowed by their Creator with certain inalienable rights"; and "that among these are life, liberty, and the pursuit of happiness," the commissioners gravely announce that "*the individual person*" (in Massachusetts) "*has no inalienable rights except that to his own righteousness.*" * They next

* That Massachusetts assessors in practice really act on the theory of Massachusetts State Tax Commissioners, that a man in Massachusetts has no inalienable rights except "to his own righteousness," has found a striking illustration in a communication recently made to the Boston public by one of its leading capitalists. In this the writer makes known the following extraordinary facts. In 1872–3, the writer (Nathan Mathews) purchased a large amount of mortgages of an incorporated company, known as the "Water Power Company," supposed at the time to be a good investment. In 1873 the company failed, and put off their creditors with mortgage bonds in exchange for their notes, but it was necessary, in order to make this arrangement work, for Mr. Mathews, who was a heavy indorser of these notes, to give new notes and the bonds as a collateral for them. No interest is now paid on the mortgage bonds, and the property is taxed *three times*. First, the lands are taxed for more than they will sell for; second, the creditors are taxed on the mortgage of the property; and Mr. Mathews, who only passed over the bonds to these creditors as collateral, is taxed as the owner of them. In view of such a state of things, it may not be impertinent to suggest, that stimulus to any other kind of righteousness than that of self-righteousness is not as great in Massachusetts as would seem to be desirable.

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scout the existence of any theory — expressed or implied — of contract between the State and the citizen, "whereby the subject is bound to render some service to the State, as a recompense for the service which the State has rendered to him"; when the Constitution of Massachusetts, which may be supposed to have been also before them, recognizes this contract in the following explicit language: The legislature shall have power "*to impose and levy proportional and reasonable taxes upon all the inhabitants of, and estates lying within the Commonwealth, for the support of the government of said Commonwealth, and the protection and preservation of the subjects thereof.*" The ground having been thus cleared of obstructions, the commissioners next advance to what in their opinion is the true theory of taxation, namely, that "*a man is taxed not to pay the State for its expense in protecting him, and not in any respect as a recompense to the State for any service in his behalf, but because his original relations to society require it.*" It is somewhat difficult to consider such reasoning from any other standpoint than the ridiculous; but as the original relations of man to society are unquestionably the relations which come into existence when society is incipient or in process of formation, — when the law of might is the law of right, and everybody gets what he can and keeps what he gets, — it may be remarked that the Massachusetts commissioners have at least been logical and consistent in making the reference they have made for the origin of such an arbitrary system as they advocate. Laying aside, however, all subtleties of reasoning, all appeals to court decisions, and all reference to the "original relations" of society, the plain, simple questions which it is desirable under this head to bring before the public are: "Is it consistent with the principles of equity? Is it conducive to public morality? Is it worthy of a high civilization for a State or a community to tax directly or indirectly property not within their territory or jurisdiction, and which their laws are unable to reach or protect?" And when the public have been induced to give them intelligent consideration, there can be no question that a further long stride in tax reform will be made most speedily.

Finally, as a further precedent to radical reforms in local

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taxation through popular action, there must be a larger popular comprehension of the principle, that in order to burden equitably and uniformly all persons and property, it is not necessary to tax primarily all persons and property within the taxing district. The experience of Philadelphia, Montreal, England, and France, where personal property is excluded from taxation, and the burden of the expenses of the State is made to fall primarily and almost exclusively upon realty, is an absolute demonstration, "that any complicated and inquisitorial system of separate taxation of goods and chattels is wholly unnecessary, an obstruction to trade, an injury to production, an unnecessary invasion of the privacy of human affairs, and a self-torment inflicted on land itself." The Massachusetts Commissioners, however, in their recent report, before referred to, contend that the doctrine that taxes tend "to equate and diffuse themselves," "is condemned by facts and justified by no sound economical theory"; and that on the contrary "the tendency of taxes is, that they must be paid by the actual persons upon whom they are levied," at the same time quoting from British writers to prove that the incidence of British taxation falls with crushing severity upon the poor, and prophesying that the same result will follow the adoption in this country of the simple system recommended by the New York Commissioners. But the reasoning of the Massachusetts Commissioners confutes itself. For if taxes do not diffuse themselves, and "stay where they are laid," how can the poor be crushed, and made to bear "disproportionate burdens" under a system like that of Great Britain, which taxes directly no actual necessary of life, nor indeed any article of consumption with the exception of tea, coffee, spirits, beer, and tobacco, which exempts all incomes under £100 ($500); and finally all houses renting for less than £20 ($100) per annum, an estimated exemption (from imperial taxation) of six-sevenths of all the dwellings in the kingdom?* What, furthermore, do such reasonings and assumptions as those of the Massachusetts Commissioners on the subject of the diffusion of taxes amount to, in view of the most significant fact, that in

* For local taxation, houses are made subject to assessment in Great Britain; the poor-rate being imposed on houses of £6 rental and upwards.

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Philadelphia, containing over fifty thousand small houses built under the auspices of loan and building fund associations, and mainly owned by their occupants; where the infinitesimal system of taxation is not recognized, where real-estate is almost the only thing subject to primary assessment, and where the current rate of taxation for the present year (1876) is in excess of two per cent (2.15) on a basis approximating market value, there is little or no complaint against the method of taxation, but only against the amount; while the contentment and general prosperity of the poorer and middle classes are admitted to be greater than in any other city of the country? *

Another illustration to the same effect and equally striking is found in the fact, that during the past year, the city of Montreal revised its system of taxation, and as preliminary to doing so, submitted to popular judgment through an official circular, prepared in the Auditor's Office, five different statements, showing in what manner the annually required municipal revenue might be raised by various forms of taxation; but in all of these the only items of personal property, which it was even suggested should be made subject to direct assessment, were the items of pleasure horses and carriages.†

The features of the proposed revision were in the direction of further simplification, — making the system to consist mainly of a taxation of one and a quarter per cent on all real property; an annual tax (to be called a business tax) on all trades, manufactories, occupations, professions, etc., not exceeding seven and a half per cent on the annual value

* In 1874 the real estate of Philadelphia was assessed at $539,003,602, claimed to be full valuation. The personal property of the city subject to taxation for city purposes in 1875 was returned at a valuation of $9,464,873; and includes horses, carriages, furniture, and gold and silver watches.

† The system of taxation in force in Montreal previous to the revision of 1875 was as follows: —

Assessment of ½ per cent on value of real estate.
" ½ " " for school tax.
" 1/10 " " " railway tax.
" 7½ " on rental.

Business duty 7½ per cent on business premises.

Water-rates.

Special taxes on insurance, telegraph, ferry, and street railway companies, and on inn-keepers, billiard-tables, theatres, breweries, banks, brokers, etc.

Licenses on grocers, butchers, exhibitions, dogs, etc.

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(rental) of the premises occupied; and an annual tax on pedlers, inn-keepers, theatres, ferries, street railways, and the owners of horses, vehicles, dogs, etc.; insurance and gas companies and banks; the proposed annual tax on the latter to be not in excess of four hundred dollars on every bank with a paid-up capital of one million or less, and increasing gradually for banks with capital in excess of one million.

In considering this question of the diffusion of taxation it is essential to correct reasoning that the distinction between *taxation* and *spoliation* be kept clearly in view. That only is entitled to be called a tax-law which levies uniformly upon all the subjects of taxation; which does not of itself exempt any part of the property *of the same class* which is selected to bear the primary burden of taxation, or by its imperfections to any extent permit such exemptions. Such taxes if not so excessive as to become a prohibition on the use of the thing taxed, become a part of the cost of all production, distribution, and consumption, and diffuse and equate themselves by natural laws in the same manner and in the same minute degree as rents, wages, cost of material, waste, and all other elements that constitute the expenses of production. "We produce to consume, and consume to produce, and the cost of consumption, including taxes, enters into the cost of production, and the cost of production, including taxes, enters into the cost of consumption, and thus taxes uniformly levied on all things of the same class, by the laws of competition, supply, and demand, and the all-pervading mediums of labor, will be distributed, percussed, and repercussed to a remote degree, until they finally fall upon every person, not in proportion to his consumption of a given article, but in proportion to his aggregate consumption. Mr. Astor bears no greater burden of taxation (and cannot be made to bear more by any laws which can properly be termed tax-laws) than the proportion which his aggregate individual consumption bears to the aggregate consumption of all others in his circuit of immediate competition. As to Mr. Astor's other taxes he is a mere tax-collector, or conduit, conducting taxes from his tenants or borrowers to the State or city treasury. A whiskey distiller is a tax-conduit or tax-collector, and sells more taxes than the original cost of whiskey;

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a dealer in imported goods, like Mr. Stewart, keeps a stock of accumulated imports, foreign and domestic, for sale; the farmer charges taxes in the price of his product; the landlord in his rents; the laborer in his wages; the clergyman in his salary; the lender in the rate of interest he receives; the lawyer in his fees; the manufacturer in his goods." *

The general principle governing the diffusion of taxes is also thus happily set forth by a recent anonymous writer in the New York Tribune, and is here quoted for the reason that it is of the utmost importance to the future enactment of proper tax laws, that the popular fallacy adhered to and re-enunciated by the Massachusetts commissioners, that "*the tendency of taxes is that they must be paid by the actual persons on whom they are levied*," should be thoroughly exploded, as it can be, by illustrations and arguments which are the farthest removed from abstract reasoning: —

"Taxation is a question of interest to all, for in a civilized community every man, woman, and child is taxed. The owner of real estate pays his tax and increases his rent to a proportionate extent. The tenant must counterbalance this increase in some way, and so he increases his profits on goods sold. If the buyer of the merchandise sells it, he also obtains an advance on the cost price sufficient to cover his charges and rent; but if he retains and consumes it, he is the man who really pays the tax to the State. But he does so at the expense of the whole community, for, supposing him to be a mechanic, then in order to pay the increased price he must get increased wages, or if he be a merchant he must charge additional profits, or if a landlord he must advance his rents. The man who evades a tax robs his neighbors. The thief pays taxes indirectly, for he is a consumer and must pay the advanced price caused by his own roguery for all he consumes, although he does steal the money to pay with. Idlers, and even tramps, pay taxes, but the amount that they indirectly pay into the fund is much less than that which they take out of it. To avoid taxation a man must go into an unsettled wilderness, where he has no neighbors, for, as soon as he has a companion, if that companion be only a dog, taxation begins, and the more companions he has, the greater improvements he makes, and the higher the civilization he enjoys, the heavier will be the taxes he must pay."

* Exclusive Taxation of Real Estate. Remarks of Isaac Sherman before the Committee of Ways and Means, New York Assembly, 1875.

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On the other hand any law or system, which by its provisions exempts, or by its imperfections allows to go unburdened, any part of the property of the same class, which is made the subject of taxation, is spoliation on that part which is discriminatingly burdened; and it is not contended for one moment that such discriminating burdens uniformly diffuse and equate themselves, any more than the loss by robbery of one man in a crowd, or by the destruction by fire of one house in a town, is equally diffused over the whole crowd or community, any further than a diminution or waste of the aggregate abundance of any community makes that community as a whole poorer. Thus, if of two persons, one is taxed and the other escapes or evades taxation on one and the same class of property, it will be obviously impossible for the former to add his taxes to whatever of such property, or the results of its employment, he may desire to sell, if he is to meet the latter in direct competition in open market, where all persons seek the lowest prices, offering to sell the same things which have not been burdened by taxation. In such cases "the surcharged tax-payer, according to the amount of the favored competition, becomes the victim, not of taxation, but of an arbitrary exaction, and cannot diffuse it, but must pay it, or retire from the unequal competition." And it is just here that the immorality of the infinitesimal system of local taxation — of which the Massachusetts system is a type — especially manifests itself. It starts out with a theory (of the necessity of taxing everybody and everything) which at the best can only be carried out most imperfectly; and so creates inequality, or a sense of wrong between man and man, at the very first stage; next (and can there be a greater absurdity?) it calls upon the individual to enumerate and value his own property, for the purpose of taxing him; or as it has been pithily expressed, "It calls for a lie, and gets it." Here is a premium offered, and generally accepted, for further inequality. And finally, it obliges men who naturally incline and desire to be honest, to become dishonest, in order to protect themselves against unfair competition, and avoid being crushed. The result of all this does not especially show itself in any popular outcry against inequality, for fraud balances fraud to such

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an extent that the advantage of fraud is in a great degree neutralized; but it does manifest itself in something which everybody is coming to recognize, and against which religious and moral teachings seem to avail little; namely, a general impairment of the standard of private and of public morality. "Give me good finances," says a recent continental writer on the finances of Austria, "and I will give you good politics." * He might have added with equal truth and propriety, Show me an individual or a State, whose finances are bad, either as respects administration or resources, and I will show you one whose morality rests upon a very insecure foundation. We ought, therefore, to find at no distant day, the special guardians and teachers of morality who earnestly desire to be true to their trust, enlisted also as the special advocates of local tax reform; and a little investigation and study of the philosophy of the diffusion of taxes will furnish them in common with the public, with the basis for constructing a system of taxation which will fortify the State alike in respect to its morality and its revenues.

Any account of the present state of public opinion and of progress in respect to local tax reform would, however, be imperfect, which omitted to call attention to a pamphlet on this subject recently published at Memphis, Tennessee, which is remarkable alike for its strength of argument and originality of illustration; for its sharp and clear antagonism to the theory and reasonings of the Massachusetts commissioners; and, finally, for the quarter from which it emanates. Its author, Enoch Ensley, is a citizen of Tennessee; an ex-confederate; an extensive and (since the war) successful planter, — one of the first to organize and profitably use free labor at the South, — and who, earnestly desiring the rapid material development of his section of the country, has felt especially solicitous that this development should not be retarded by the adoption and enforcement at the South of an unsound system of State and municipal taxation. In furtherance of this desire he has accordingly published, in the form of a letter addressed to the Governor of Tennessee, a little pamphlet of twenty-seven pages, in which he asks the people of

* Comte de Mülinen.

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that State to consider with him, from the standpoint of their common material interest, "What should be Taxed, and how it should be Taxed?" * If the people of Tennessee would read and consider it, this pamphlet would give them much information, difficult to obtain elsewhere, in a small compass, and possibly prove to their State the inception of a period of great prosperity.

Mr. Ensley commences by proposing this rule, or motto, as the basis for a Tennessee system of taxation: "*Never tax any thing that would be of value to your State, that could and would run away, or that could and would come to you.*" Mr. Ensley then lays down the proposition, that property naturally divides itself in two classes, — movable and immovable, — and that the former has no value until movable property is directly created or employed upon it, or until the former has a value reflected upon it from the employment of movable property in proximity; citing in proof and illustration the fact that the best acre of land in America has no value until some one goes on to it with movable capital, instruments, animals, &c., to cultivate or use it, and that from that time its value increases steadily in proportion to the increase of the value of the movables directly or indirectly employed or connected with it, until it may finally attain the value of the lots covered by the leading stores and banking institutions of our large cities.

In all this, however, there is nothing of novelty; but in the homely, clear illustrations which Mr. Ensley employs for impressing his fellow-citizens with the truth of his fundamental propositions, novelty is not wanting. Thus, for example: —

"I hold that, of all men, the real estate or fixed property man is most interested in the rule or motto I have adopted. To illustrate, I will say, there is an acre of ground in Memphis — say in front of the Overton Block — that is worth $200,000; while the writer has an acre six miles below the city, quite as good naturally, and even better (because it will produce more corn, cotton, pumpkins, peas, potatoes, cabbages, etc., than the Overton lot will, or ever would), and my acre is not worth one hundred dollars per acre. Now,

* "The Tax Question. Important Letter to Governor Brown. What should be Taxed, and how it should be Taxed? Suggestions for the People of Tennessee to consider." By Enoch Ensley, of Memphis. Nashville, Tenn., 1873.

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why is it that the Overton acre is worth $200,000 per acre, and mine not worth $100. The reason is, that there is employed on the Overton acre profitably several hundred thousand dollars of movable property, whilst upon mine there is employed the sixteenth part of a negro, the sixteenth part of a mule, plough, hoe, etc. Now, if you will manage in any way, either by taxation or otherwise, to drive from this Overton acre the two, three, or four hundred thousand dollars, and render it so that this capital cannot be employed upon it with a profit, it will not be worth more than my acre, — in fact, not so much, for there is nothing so valueless as ground covered with houses, when there is no demand for said houses. And further, if you do anything to make the two, three, or five hundred thousand dollars pay less profit, you will damage the ground, or lessen its value, more rapidly than you will decrease the profits, — not in the same ratio, but more rapidly. Suppose, for instance, the profit has been ten per cent net on the capital employed, and the property is paying a rental on $300,000; if you reduce the profits permanently, in any way to *five* per cent net, the property would not pay a rental on $150,000; in fact, it would hardly pay any rent at all, for five per cent would be too small to induce a business at all in this country."

"Movable property always seeks and locates on immovable property, where it thrives and multiplies most rapidly. A spot of ground, a city, a state, or a nation that offers the greatest thrift will be sought and located upon by the greatest quantity of it, and the greater the quantity the more value and thrift will the land have. Any tax levied upon it lessens its thrift, and consequently is in violation of the correct principle."

"Here I wish to state a truism which, perhaps, many owners of real estate in Tennessee may never have thought of, to wit: The renter or lessee of real estate must always prosper before the owner of the real estate can expect to prosper. This is certainly true as a rule, when taken for a series of years, in a country like ours, where the land is abundant and the people free to go where they please. I don't mean he must have greater prosperity, but that he must prosper first."

"In the city of Nashville (1873) the rate of taxation for all purposes is about three per cent, and in Memphis it is about four and a half per cent. All property in these cities is sought to be taxed at these respective rates, and trade and merchandise is sought to be taxed even higher by nearly one half of one per cent, which would make the tax on merchandise about three and one half per cent in Nashville, and about five per cent in Memphis. The tax in Nashville is

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three per cent on money, and by the laws of the State, not exceeding ten per cent interest can be charged; three per cent from ten leaves seven. United States bonds pay six per cent annually in gold, which is fully equal to seven per cent currency, and taken into consideration that they can be realized on at any time, they are far more desirable than money loaned at seven per cent currency. The result is that there are millions of dollars in the city of Nashville invested in bonds which pay no tax whatever, which (money), if there was no tax sought to be put upon it would be turned loose, and enter the industry, trade, and development of the resources of the State."

"A further result of the tax at three per cent is, that it offers inducement to banks to carry on business with a small capital, and rely upon deposits for capital; in other words, to undertake to do banking business without capital. The result is, that in Nashville now there is only about one million dollars banking capital, when before the war there was nearly or quite five millions. If you will give her five millions of banking capital now (and she would surely get it but for the tax on money), and not impose the high and oppressive taxes on her trade, it is an absolute certainty that her population, trade, manufactures, and general industry would increase one hundred per cent in the next ten years, and perhaps in the next five or seven years. If you double her population, trade, etc., which must be accompanied by general thrift and go-ahead, you will quadruple the value of real estate or immovable property, thereby add largely to the wealth of the State, and enable the State, less oppressively to the citizens throughout the State, to pay her interest and debt."

"If you will levy and collect the tax that is sought to be collected in Memphis to-day, on the money, trade, etc. of New York, and charge no tax in Boston, Philadelphia, or Baltimore, I will guarantee to transfer, in a short time, hundreds of millions of the trade, money, etc. of New York to those cities, and if (New York) will continue it five or ten years, I will guarantee to show you, in either of these cities, more trade, more money, and more people than in New York. I will guarantee to depopulate her more effectually and more permanently than a plague ever did a city, and impoverish her more effectually than war ever did. Yes, I will hurt her infinitely worse than a fire, and I will make it entirely safe for women and children to cross Broadway at City Park without the protection of policemen. And who would be the injured party in New York by the enforcement of such a law? Would it be the merchants who, for aught I know, rent their houses from the great real estate owners? or would it be the great real-estate owners? In other words, would it be the movable

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property-man, — with his goods, money, etc. — who can take it and go elsewhere, or would it be the immovable property or real-estate man who has to stay where he is, and pay his city and county debt, without tenants or rentals from his property? Hence I say, that of all the men who should object to oppressive, and to follow the principle, I will add, any taxation at all on money, merchandise, or trade, manufactories, etc., it is the man who owns the real estate or immovable property. His position should be this: He should say to the thousands of men with money in their pockets, looking out a favorable locality to go to banking, merchandising, manufacturing, or farming, Come, locate on me; I will not oppress you. Come to me, for I can't go to you, and we must come together, or I am worth nothing; and, knowing this, I will not tax and oppress you. Other localities make you pay a tax; I will not, and consequently I offer that advantage over other localities. Heretofore, it has been the merchant who has done the complaining about the tax levied on him. He is not the one to do it. It is the real estate man, and the writer being one of these men, owning real estate almost entirely, and not owning a dollar's worth of merchandise of any kind for sale, and not being a lender of money, but on the contrary a borrower, and not being the owner of machinery, except a steam saw-mill and a steam cotton-gin, but being a plain farmer or planter by profession, thinking he sees his interest in the system he is advocating, consequently therein is to be found the moving cause of this letter."

"I contend that this system will lighten the burdens of taxation on real estate, and after a short time the rate of taxation will be really less. A short time ago, a prominent real-estate owner of Memphis said to me: Do you say, that a merchant or banker shall make from ten to sixteen per cent on their capital, and pay no tax, and I make only six or eight per cent on the houses they are occupying, and pay all the tax? Yes, said I; you seek to tax them, and that is the reason you get no larger per cent on your property. Says I, if they make one hundred per cent per annum on their capital, you should not want them to pay a copper of tax. Why? because if they made it, you would have forty applicants for the house they are doing business in, and if you should, you would certainly get a full rent for it, more than the extra tax, as only one of the forty could get it, and the other thirty-nine would be unaccommodated; and if your tenants should be making this large per cent, it is reasonable to presume that they would be making something near it all over town. But as only the present tenants, or their number, could be accommodated with houses, the result would be that you would not only

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get exorbitant rents for all the houses in town, but you would have demand for the hundreds of thousands of vacant lots throughout the city to build store-houses on; they would buy them, or offer you such enormous rents as would induce you to build them houses on lots that you have been paying taxes on for years, and received no rental from. Soon there would be houses going up all over the city, block after block. The brick-maker, the lumberman, the carpenter, bricklayer, and all descriptions of mechanics and laborers would have more than they could do, so that the builders would have to send elsewhere for mechanics. All these new-comers in turn would want residences, and thus you would bring into demand and make pay rental thousands of lots that have never paid anything, give active employment to all the mechanics you have, and besides bring thousands from other places."

"Let us go a little further, and see how it (this policy) affects all and everybody in the city. These new-comers get their houses, and then they want furniture, and they patronize the furniture-man; they want a carriage or wagon for family use, and they patronize your carriage-man; and then horses, and patronize the horse-man; and then the blacksmith, to shoe them; and then the retail dry-goods houses, mantua-makers, milliners, grocery-men, butchers, and in short every kind of retail establishment throughout the city, thereby giving vigor, life, and thrift to all; and thus it would go on, until before you are aware of it, you would have a city of thousands of people, and be worth and pay a rental on hundreds of millions of dollars. Then where would be your city and county debt, and a necessity for a high rate of taxation? and where would be the oppression, when you have got four times as much to pay with? In a few years, when the legislature came to fix the rate of taxation for the State, it would discover that a spot of ground down here in West Tennessee, called Memphis, which heretofore has been worth and paid a tax on only $ 25,000,000, is now worth, and can pay a tax on $ 100,000,000, just as easily as it did some years ago pay on $ 25,000,000. Consequently, the tax to pay current expenses, interest on the State debt, etc., need not throughout the State be put so high."

"Of course, no general trade would pay one hundred per cent per annum, but I have adopted it (this rate) to illustrate the principle, which is the same."

All this, as before intimated, is sound, clear, homely talk; but it is safe to predicate that it will make no material impression on the public opinion of the section to which it is specially

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addressed, or much anywhere. Nations and communities, as well as individuals, learn economic wisdom almost exclusively in the hard and costly school of experience.

To round out and complete Mr. Ensley's picture of American taxation as it might be, and its results, he should have further added and illustrated, that by the adoption of a system of taxation based mainly on realty and rentals, the latter to be assessed directly against the occupier, a much larger number of citizens than now can probably be induced to take an active interest in municipal politics, and watch all proceedings involving municipal expenditures; for under such a system nearly every citizen would pay a direct tax, proportioned to the scale of his residence. Under the existing popular systems of taxation on the contrary, the taxes on realty are assessed against and collected of the real estate owners, who in turn collect it of their tenants, not in the form of taxes, but of rents. The tenant, however, rarely if ever discriminates in such matters, and so becomes generally indifferent to municipal politics, and not unfrequently through a feeling that increased taxation cannot affect his interests, advocates the largest expenditures. In the English cities, and in London more especially, where taxation falls mainly on rentals and occupiers, this watchfulness of the individual citizen and rate-payer over the proceedings of their municipal authorities in all matters of expenditure has been particularly observed and its beneficial influence recorded.

Finally, while we are discussing what we shall tax, and how we shall tax, and speculating on what future courts and legislatures are likely to do in settling these questions, it should not be overlooked that there is another element all the time working for reform, which puts courts and legislatures in a great degree at defiance; and that is, the quiet, unorganized, never-ceasing, but in the end all-powerful and all-subduing spirit of popular resistance which, especially in all free and highly intelligent communities, always puts itself in opposition to the effectual carrying out of bad laws. The smuggler has been called "the knight-errant of civilization," because in disregard of law, and sustained in a high degree by popular opinion, he compels the letting down of barriers by which a false political economy seeks to isolate nation from nation, and re-

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strict commerce. When every member of the House of Commons had a silk handkerchief of French manufacture in his pocket, the importation of which was forbidden under heavy penalties, the law establishing such a prohibition, although unrepealed on the statute-book, was dead, and only waited for burial. And so in respect to that feature of the generally accepted American tax system which relates to personal property. The law says, that all such property shall be taxed at its full and true value. Individual, if not public, sentiment says it shall not. How stands the conflict? In New York city, out of a population of over one million, only 8,920 names, or less than one per cent of the population had, in 1875, any "household furniture, money, goods, chattels, debts due from solvent debtors, whether on account of contract, note, bond, or mortgage, public stocks, and stocks in moneyed corporations," or in general any personal property of which the assessors could take cognizance for taxation; although at the same time the assessors estimate that of the property defined and described by law to be personal property, there is in New York city an amount approximating $2,000,000,000 in value.* In the State of New York, the State assessors for 1873 report that, of the personal property of the State, "less than 15 per cent liable to taxation finds a place on the rolls of the assessors,"† while in Ohio, under laws similar to those existing in New York, not one person in ten has any visible property which can be made subject to assessment. In New York and Ohio, the basis of taxation has therefore practically got down to a real estate basis, because the people, acting individually, will not have any other; and yet, acting collectively, through their representatives in "legislature assembled," these same people decide that the law, under which these proceedings can be possible, shall not be taken from the statute-book, and decently buried. They prefer to build churches, establish schools, and at the same time keep up a system which neutralizes in great part the very work for which the churches and schools are established. And even in Massachusetts, which claims a better record, it would probably be found, if the facts could be ascertained, that under the

* Report of the Tax Commissioners of New York City, 1875.

† Report of the State Assessors of New York for the year 1873.

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most stringent system which popular opinion can be made to tolerate, not fifty per cent of the personal property subject under law to assessment ever comes within the cognizance of the assessors.

DAVID A. WELLS.

ART. VI. — CRITICAL NOTICES.

1. — *Sound.* By JOHN TYNDALL, D. C. L., LL. D., F. R. S., Professor of Natural Philosophy in the Royal Institution of Great Britain. Third Edition. London: Longmans, Green, & Co. 1875.

THE chief differences between this new edition of a popular and excellent text-book and the former issues consist in the insertion, before the last two chapters, of a new chapter (numbered VII.), of sixty-seven pages, entitled "Researches on the Acoustic Transparency of the Atmosphere in Relation to the Question of Fog-Signalling"; and in a Preface of nineteen pages, mainly occupied in combating the views promulgated by Professor Henry in the Appendix to the last U. S. Lighthouse Board Report, for 1874.

It is well known, from various publications, that Professor Tyndall was engaged under the auspices of the Trinity House, during a great portion of the year 1873 (beginning in May), in investigating the subject of fog-signals, — a subject which had been under investigation by the U. S. Lighthouse Board from a much earlier date and for a much longer period; and Major Elliot, in his recent valuable Report of observations on European Lighthouse Systems, was struck with the fact that "our shore fog-signals are vastly superior, both in number and power," to those of England or of Europe.

Notwithstanding that the results of acoustic observations made from time to time by Professor Henry and his coadjutors during the past ten years, and communicated to the Lighthouse Board, must have been known to its Engineer Secretary, — Major Elliot, — he has occupied one eighth of the Report alluded to, with the detail of Professor Tyndall's observations, mainly embracing the same results; being struck probably with the differences of explanation offered on some of the observed phenomena. The natural tendency, however, of such extended references to foreign investigations, in a narrative addressed to the U. S. Lighthouse Board by its own agent, is obviously as its chairman has stated in the official Report of 1874,

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"to convey the idea that the facts which it states were new to the Board, and that the latter had obtained no results of a similar kind; while a reference to the Appendix to this Report will show that the researches of our Lighthouse Board have been much more extensive on this subject than those of the Trinity House, and that the latter has established no facts of practical importance which had not previously been observed and used by the former."

This passage is quoted by Professor Tyndall, and he remarks upon it (Preface, p. 11, foot-note): "It will be borne in mind that the Washington Appendix was published nearly a year after my Report to the Trinity House." While this may be accepted as an evidence of the originality of said Report, it does not establish priority of its subject, since corresponding Reports were made to the U. S. Lighthouse Board in 1855, by Professor J. H. Alexander; in 1865, 1867, and in recent years, by Professer Henry; and in 1871, by General Duane. Professor Tyndall, however, does not appear to be quite satisfied with the broad statement of Professor Henry. He says: "My desire is to be strictly just; and this desire compels me to express the opinion that their Report fails to establish the inordinate claim made in its first paragraph. It contains observations, but contradictory observations; while as regards the establishment of any principle which should reconcile the conflicting results, it leaves our condition unimproved." (*Preface*, p. 15.)

That the observations were "contradictory" is one of their merits, as the essential prerequisite to "the establishment of any principle" that should have a permanent value; and this merit is shared by the observations of Professor Tyndall, who records that "the most conflicting results were at first obtained" (p. 321). The failure to apprehend the complexity of the conditions controlling the propagation of sound, leading to hasty but natural generalizations from a single well-marked occurrence, or from a small number, has tended to impair the confidence of subsequent investigators in the accuracy of previous "contradictory observations."

There is no doubt that were the striking experiment made by Delaroche in 1816, to be repeated under the same essential circumstances, it would be found that a particular sound is carried farther at right angles to the direction of the wind than in its direction. But this is certainly not the general fact, though sometimes so stated.* And the "contradictory observations" as to the effect of

* "The strangeness of Delaroche's results consisted in his establishing by quantitative measurements, not only that sound has a greater range in the direction

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wind upon sound generally have led some persons to deny its influence altogether. Thus General Duane in his instructive Report to the U. S. Lighthouse Board, January 12, 1872, detailing the results of experiments made at Portland in 1871, concludes that "the force and direction of the wind have much less influence than has generally been supposed," since he had previously noticed that while the signal sound is often heard at a much greater distance in one direction than in another, "this is not the effect of wind, as the signal is frequently heard much farther against the wind than with it."

On this subject there is in the researches of Professor Tyndall a singular lack of any original observation or suggestion; and as to the true character of the perturbations of sound by aerial currents, he "leaves our condition unimproved." In Chapter VII. Section 3, "Contradictory Results," he says:. "None of the meteorological agents observed could be singled out as the cause of these fluctuations. The wind exerts all acknowledged power over sound, but it could not account for these phenomena. On the 25th of June, for example, when the range was only six and a half miles, the wind was favorable; on the 26th, when the range exceeded nine and one fourth miles, it was opposed to the sound" (p. 268). Not a thought occurs here that aerial currents are seldom uniform for any great extent; not a suspicion that, above the observer's head, the wind might differ either in direction or in force, or, if it did, that either of these circumstances could in any way affect the radiations of sound; no idea of differences of temperature in atmospheric strata exercising any action of acoustic refraction; but only the most cursory notice is taken that "the wind was favorable," or "was opposed to the sound."

The most significant remark in his work, on the "Action of Wind" is the following from Chapter VII. Section 7: "On the leeward side of the Foreland, on the 23d of October, the sounds were heard at least four times as far as on the windward side. . . . . This well-known effect of the wind is exceedingly difficult to explain. Indeed, the only explanation worthy of the name is one offered by Professor Stokes. . . . . In a short, but exceedingly able communication presented to the British Association in 1857, the eminent physicist above mentioned points out a cause which, *if sufficient*, would account for the results referred to." (pp. 309, 310, 311.)

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of the wind than in the opposite direction, but that the range at right angles to the wind is the maximum." (*Sound*, pp. 310, 311.) Professor Tyndall adds in a footnote (p. 311): "Experiments so important as those of Delaroche ought not to be left without verification. I have made arrangements with a view to this object."

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To Professor Henry belongs the credit of having first established the principles reconciling the "contradictory observations" made by himself and by others, and demonstrating by a carefully discriminated series of facts the "sufficiency" of the theory proposed by Professor Stokes.

During Professor Tyndall's visit to this country, he was present December 11, 1872, at the reading of a paper by Professor Henry, "On certain abnormal Phenomena of Sound in Connection with Fog-Signals," before the Philosophical Society of Washington. (Bulletin, Phil. Soc. W., Vol. I. p. 65.) Almost immediately on his return to England, in 1873, he began a series of investigations on the same subject. "On the 19th of May, 1873, this inquiry began. The South Foreland, near Dover, was chosen as the signal station." (*Sound*, p. 260.) Yet throughout the numerous channels of publication in which his results were spread, one looks in vain for an allusion to any similar work having been done in this country.

In the new Preface (dated June, 1875), after noticing somewhat superfluously, though with an air of impartial commendation, the experiments of Professor Henry, published in the Lighthouse Board Report, on the character of the instruments employed as fog-signals (*Preface*, pp. 12, 13), he adds vaguely: "I was quite aware, in a general way, that labors like those now for the first time made public had been conducted in the United States, and this knowledge was not without influence upon my conduct." (p. 14.) What acknowledged influence these earlier labors of Professor Henry in the same field had does not appear from anything to be found in Professor Tyndall's writings. That the Preface in its present form is due to the dissent from his favorite theory of invisible acoustic clouds in the atmosphere, expressed by Professor Henry in the Appendix to the Lighthouse Report of 1874, is sufficiently obvious. Indeed, its polemical tenor very clearly indicates that the question involved therein is simply one of explanation, — the acceptance or non-acceptance of certain views, — in no respect one of priority of observation of the fundamental facts. And, in fact, no anomaly of sound has been referred to, not embraced and discussed in the previous investigations of the U. S. Lighthouse Board, and no practical recommendations given for improving the fog-signal service with a view to the protection of life and of property at sea, not already adopted in this country.

After briefly reciting some of the instrumental experiments undertaken by the chairman of the U. S. Lighthouse Board, Professor Tyndall continues: "Further observations were made by Professor Henry and his colleagues in August, 1873, and in August and Sep-

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tember, 1874. In the brief but interesting account of these experiments, a hypothetical element appears which is absent from the record of the earlier observations." (*Preface*, p. 13.) This tribute at least illustrates the caution of the true philosopher in framing hypotheses.

The key-note of Professor Tyndall's contribution to the theory of sound is atmospheric "flocculence," or non-homogeneity. On the remarkable variability in the range or penetration of sound observed on different days, he gives the following summary of his conclusions: "These discrepancies were proved to be due to a state of the air which bears the same relation to sound that cloudiness does to light. By streams of air differently heated, or saturated in different degrees with aqueous vapors, the atmosphere is rendered *flocculent* to sound. *Acoustic clouds* in fact are incessantly floating or flying through the air. They have nothing whatever to do with ordinary clouds, fogs, or haze. The most transparent atmosphere may be filled with them; converting days of extraordinary optical transparency into days of equally extraordinary acoustic opacity. . . . . Aerial echoes of extraordinary intensity and of long duration are thus produced. They occur, contrary to the opinion hitherto entertained, in the clearest air. . . . . The existence of these aerial echoes has been proved by observation and experiment. They may arise either from air-currents differently heated, or from air-currents differently saturated with vapor." (pp. 321, 322.)

This is simply an extension of the received doctrine of a non-homogeneous atmosphere being unfavorable to the transmission of sound; familiar for the last three quarters of a century, or since the observations of Humboldt on his tour in South America. Two years before Professor Tyndall's investigations, General Duane, in a Report to the U. S. Lighthouse Board, of observations made in 1871, had arrived at similar conclusions. This, however, was first published in the Report of the Lighthouse Board for 1874. The following are his remarks on the subject: "Now it frequently occurs that a signal, which under ordinary circumstances would be audible at the distance of fifteen miles, cannot be heard from a vessel at the distance of a single mile. This is probably due to the reflection mentioned by Humboldt. The temperature of the air over the land where the fog-signal is located being very different from that over the sea, the sound, in passing from the former to the latter, undergoes reflection at their surface of contact. The correctness of this view is rendered more probable by the fact that when the sound is thus impeded in the direction of the sea, it has been observed to be much stronger inland. . . . .

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Experiments and observation lead to the conclusion that these anomalies in the penetration and direction of sound from fog-signals are to be attributed mainly to the want of uniformity in the surrounding atmosphere, and that snow, rain, fog, and the force and direction of the wind have much less influence than has generally been supposed." (*Lighthouse Report*, p. 104.)

Professor Tyndall follows his quotation of these passages with this comment: "The Report of General Duane is marked throughout by fidelity to facts, rare sagacity, and soberness of speculation. The last three of the paragraphs just quoted exhibit, in my opinion, the only approach to a true explanation of the phenomena which the Washington Report reveals." (*Preface*, p. 18.)

Now the rationale offered by Professor Henry, — the flexure of sound-rays by the unequal velocity of their wave-fronts, certainly embraces a larger variety of obscure and puzzling phenomena than that proposed by Professor Tyndall. The observed facts of sound being sometimes heard far beyond an intermediate region of inaudibility, — of its being heard through a given region of atmosphere in one direction, while wholly unheard in the reverse direction,— of its being heard at the mast-head of a vessel, after being lost on deck,— and even of its being occasionally heard with increased distinctness against the sensible wind, — are quite inexplicable on the "acoustic-cloud" hypothesis, while they receive a satisfactory explanation on the hypothesis of acoustic refraction.

Professor Henry, in publishing the Report of General Duane, thus comments on the passages above quoted: "In the foregoing, I differ entirely in opinion from General Duane, as to the cause of extinction of powerful sounds being due to the unequal density of the atmosphere. The velocity of sound is not at all affected by barometric pressure; but if the difference in pressure is caused by a difference in heat, or by the expansive power of vapor mingled with the air, a slight degree of obstruction of sounds may be observed. But this effect, we think, is entirely too minute to produce the results noted by General Duane and Dr. Tyndall, while we shall find in the action of the currents of wind above and below a true and sufficient cause." (*Lighthouse Report*, p. 104.)

Professor Tyndall quotes this paragraph (*Preface*, p. 18), and espouses very positively the opposite view of General Duane: "The observations at the South Foreland, where the sound has been proved to reach a distance of more than twelve miles against the wind, backed by decisive experiments, reduce to certainty the surmises of General Duane." (*Preface*, p. 19.) His presentation, however, of the

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view of his competitor, hardly exhibits his usual accuracy or courtesy. He says: "Professor Henry thus accounts for the fact that the north-east snow-wind renders the sound of Cape Elizabeth audible at Portland. In the higher regions of the atmosphere he places an ideal wind, blowing in a direction opposed to the real one, which *always* accompanies the latter, and which more than neutralizes its action. In speculating thus he bases himself on the reasoning of Professor Stokes, according to which a sound-wave moving against the wind is tilted upwards. The upper and opposing wind is invented for the purpose of tilting again the already lifted sound-wave downwards. Professor Henry does not explain how the sound-wave recrosses the hostile lower current, nor does he give any definite notion of the conditions under which it can be shown that it will reach the observer." (pp. 19, 20.)

This passage certainly does not indicate a very clear or correct comprehension of the doctrine of refraction as resulting from simple *differences* in the force or direction of the wind; and the critic has permitted himself to employ the word "is *invented*," notwithstanding that in the Lighthouse Report reasons are given, both from experiment and observation, fully justifying the assumption of an "upper opposing wind."

Professor Tyndall, with an air of "authority," proceeds: "This, so far as I know, is the only theoretic gleam cast by the Washington Report on the conflicting results which have hitherto rendered experiments on fog-signals so bewildering. I fear it is an *ignis fatuus* instead of a safe guiding light. Professor Henry, however, boldly applies the hypothesis in a variety of instances. But he dwells with particular emphasis upon a case of non-reciprocity which he considers absolutely fatal to my views regarding the flocculence of the atmosphere." (p. 20.)

Professor Henry may here be quoted at length: "That a flocculent condition of the atmosphere, due to the varying density produced by the mingling of aqueous vapor, is a true cause of obstruction in the transmission of sound, is a fact borne out by deduction from the principles of wave-motion, as well as by the experiments of the distinguished physicist of the Royal Institution of Great Britain; but from all the observations we have made on this subject, we are far from thinking that this is the efficient cause of the phenomena under consideration. A fatal objection, we think, to the truth of the hypothesis Professor Tyndall has advanced, is that the obstruction to the sound, whatever may be its nature, is not the same in different directions. We think we are warranted in asserting that in the

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cases of acoustic opacity which he has described, if he had simultaneously made observations in an opposite direction, he would have come to a different conclusion. That a flocculent condition of the atmosphere should slightly obstruct the sound, is not difficult to conceive; but that it should obstruct the ray in one direction and not in an opposite, or in a greater degree in one direction than in another, the stratum of air being the same in both cases, is at variance with any fact in nature with which we are acquainted. We would hesitate to speak so decidedly against the conclusions of Professor Tyndall, for whose clearness of conception of physical principles, skill in manipulation, and power of logical deduction, we entertain the highest appreciation, were the facts which were obtained in our investigations of a less explicit character." (*Lighthouse Report*, pp. 116, 117.)

Among several similar observations, the one mainly referred to is the case of a ten-inch steam-whistle at the Whitehead Light-station (about one mile and a half off the coast of Maine), suddenly ceasing to be heard by an approaching vessel within the distance of about three miles. Professor Henry notes that "the wind during this time was from the south, or approximately in an opposite direction to the sound"; a smaller steam-whistle on the vessel being meanwhile distinctly heard at the station. (*Lighthouse Report*, pp. 107, 108.)

The champion of "flocculence," still undaunted, replies: "But the atmosphere was not still, and a sufficient reason for the observed non-reciprocity is to be found in the recorded fact that the wind was blowing against the shore-signal, and in favor of the ship-signal." (*Preface*, p. 21.) How this favors the acoustic-cloud hypothesis is not very apparent. Professor Henry had previously remarked: "At first sight, the explanation of this might seem to be very simple, namely, that the sound is borne on in the one direction and retarded in the other by the motion of the wind. But this explanation, satisfactory as it might appear, cannot be true. Sound moves at the rate of about 780 miles an hour, and therefore, on the above supposition, a wind of 7.8 miles per hour could neither retard nor accelerate its velocity more than one per cent,—an amount inappreciable to ordinary observation; whereas we know that a wind of the velocity we have mentioned is frequently accompanied with a reduction of the penetrating power of sound of more than fifty per cent." (*Lighthouse Report*, p. 106.)

Professor Tyndall continues: "But the argument of Professor Henry, on which he places his main reliance, would be untenable, *even* had the air been still. By the very aerial reflection which he practically ignores, reciprocity may be destroyed in a calm atmos-

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phere. In proof of this assertion, I would refer him to a short paper on 'Acoustic Reversibility' printed at the end of this volume." (*Preface*, p. 21.) The condition, "*even* had the air been still," is certainly curious, in view of the fact that "the argument of Professor Henry" is based directly on the existence of differences in the velocity of the wind!

The chapter on "Acoustic Reversibility" so confidingly referred to, forming "Appendix II.," and the conclusion of the work (pp. 403–411), is probably the least satisfactory essay in the volume. The card-board screen experiment, permitting sound to be diffracted around the edge of the card to a nearer point in one direction than in the reverse direction, appears quite foreign to the remarkable case of "non-reversibility" observed by Arago in 1822; and on no known physical principle can it be shown that a flocculent veil in the atmosphere will be "diacoustic" on one side, and "catacoustic" on the opposite side. It is the conception, of a transparent mirror, with a valve so cunningly arranged, that all the rays falling on one side will pass through without obstruction, while all the rays falling on the other side will be reflected back.

And yet, with a complacency that almost seems infatuation, Professor Tyndall continues: "The most remarkable case of non-reciprocity on record, and which, prior to the demonstration of the existence and power of acoustic clouds, remained an insoluble enigma, is there shown to be capable of satisfactory solution. These clouds explain perfectly the 'abnormal phenomena' of Professor Henry. Aware of their existence, the falling off and subsequent recovery of a signal-sound, as noticed by him and General Duane, is no more a mystery than the interception of the solar light by a common cloud, and its restoration after the cloud has moved or melted away. The clew to all the difficulties and anomalies of this question is to be found in the aerial echoes, the significance of which has been overlooked by General Duane, and misinterpreted by Professor Henry." (*Preface*, p. 21.)

It is believed that the real cause of the abnormal phenomena noticed lies much deeper than is here supposed; and that to every unbiassed physicist it can be satisfactorily shown that the true solution of the enigma has been discovered by Professor Henry, and has been as signally missed by Professor Tyndall;* nay, that it has even failed to be rightly understood by him, after having been propounded.

* This subject has been quite recently discussed, in the American Jour. Science for January and February.

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"If we accept for a moment," says he, "a statement which Professor Henry seems to indorse, that sound-waves of great intensity, when they impinge upon a solid or liquid surface, do not obey the law of incidence and reflection, but 'roll along the surface like a cloud of smoke,' it only increases the difficulty." (*Preface*, p. 23.) There was no occasion for attributing this inexact comparison to Professor Henry. The phrase quoted is from General Duane, who says in his Report: "Upon a large scale, sound does not appear, on striking a surface, to be reflected after the manner of light and heat, but to roll along it like a cloud of smoke." The only "seeming indorsement" in Professor Henry's comment is: "This statement is in a measure in accordance with results which I have previously found," that "powerful sounds tend to diverge laterally to such a degree as to render reflectors of comparatively little use." (*Lighthouse Report*, p. 100.) The statement of Professor Henry is simply one of fact, ascertained by very decisive experiments, the details of which are given in his Report. Nor is this so surprising as might appear, if we consider that the dimensions of a sound-reflector cannot conveniently exceed an average wave-length of sound. Were it possible to construct such a reflector, comparable in this respect to even the very smallest ever employed optically, we should probably have that distinct relation of incidence and reflection observed in light, and proportionately in ordinary sounds within small distances.

If we may judge from Professor Tyndall's earnest invective (rather oddly interpolated into his "aerial echoes"), he has at last triumphantly burst asunder the shackles of "authority" which had previously bound him, and now stands forth disenthralled and exultant.

"The clew to all the difficulties and anomalies of this question is to be found in the aerial echoes, the significance of which has been overlooked by General Duane, and misinterpreted by Professor Henry. And here a word might be said with regard to the injurious influence still exercised by authority in science. The affirmations of the highest authorities, that from clear air no sensible echo ever comes, were so distinct that my mind for a time refused to entertain the idea. Authority caused me for weeks to depart from the truth, and to seek counsel among delusions.* On the day our observations

* On page 258 occurs this remarkable statement: "The publication of Dr. Derham's celebrated paper in the Philosophical Transactions for 1708 marks the latest systematic inquiry into the causes which affect the *intensity* of sound in the atmosphere." This systematic inquiry does not however appear to have been read; for "the affirmation of *this* authority" (however "injurious its influence") is certainly "distinct,"— one hundred and sixty-seven years ago. "I will add also an

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at the South Foreland began, I heard the echoes. They perplexed me. I heard them again and again, and listened to the explanations offered by some ingenious persons at the Foreland. They were an 'ocean-echo.' This is the very phraseology now used by Professor Henry ; . . . . one of the phases of thought then passed through, one of the solutions then weighed in the balance and found wanting, being identical with that which Professor Henry now offers for acceptation. But though it thus deflected me from the proper track, shall I say that authority in science is injurious? Not without some qualification. It is not only injurious, but deadly, when it cows the intellect into fear of questioning it." (*Preface*, p. 22.) To what is all this *apropos*?

This is the very style of protest one is accustomed to hear from some automatic-motor inventor, quadrature discoverer, anti-Newtonian philosopher, or transcendental mathematician intent on showing ("in the absence of all proof to the contrary") that a straight line indefinitely prolonged may possibly cease to be rectilinear. But surely such fervid "air-beating" is scarcely worthy of one who has himself earned the right (perhaps not altogether unconsciously) to speak with some authority on certain topics of science. It is not usually the intelligent and genuine seeker after simple *truth* who feels any occasion for emancipation from the trammels of "*authority* in science." The only thing approaching such sway recognized by the cultured is the deference justly paid to the opinion of experts, in the range of their special explorations. Science has no hierarchy, and hence no dogma. Its domain is absolutely republican.

But when Professor Tyndall declares that "authority" caused him to *depart* from the truth, and that "the affirmations of the highest authorities" were "distinct," that from clear air no sensible echo *ever* comes, it is to be feared that he has been the unconscious victim of a non-scientific use of the imagination. It may be doubted whether such "distinct affirmations" can be found in any authority ("highest" or lowest) on the subject of sound. We should as much expect to find the distinct affirmation by an expert in optics, that from the empty ether no luminous reflection ever comes, — a proposition which would yet probably so command the unhesitating assent of Professor Tyndall, that "his mind would refuse to entertain the idea" of its denial. The truth is that the human mind is fortunately

example of *the reflection of sound in the air from aerial particles*. When I have heard the boom of great guns of war, especially in a clear and tranquil sky, I have quite frequently observed a murmur aloft in the air, preceding the report."—*Phil. Trans.* 1708, XXVI. 2.

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so constituted, that it hesitates to adopt a new apprehension not clearly justified by conscious experience; and Professor Tyndall "for a time refused to entertain the idea" of aerial echoes, doubtless for the same reason that some of his readers will continue to do so, *notwithstanding* his "authority."

Our author continues: "But the authority which so merits our respect as to compel us to test and overthrow all its supports, before accepting a conclusion opposed to it, is not wholly noxious. On the contrary, the disciplines it imposes may be in the highest degree salutary, though they may end, as in the present case, in the ruin of authority." (*Preface*, p. 22.) Authority in science is injurious; but with this qualification it may be "deadly," or it may be only partially "noxious." An impassive reader may well wonder what fortress of scientific pretension it is which (though "meriting respect") has been so shattered and demolished.

Had some enthusiastic believer in the "authority" of Professor Tyndall proclaimed for his hero, that having invested the fastnesses of "the highest authorities" preceding him, — by the salutary discipline acquired in "testing and overthrowing all the supports" of the besieged, — he had finally achieved a victory ending in the total "ruin of authority," the bulletin would probably be accounted by the judicious as both fulsome and inane. As the utterance of the intellectual Luther himself, it may be left without characterization.

Not the least characteristic feature exhibited throughout this controversial "Preface" is the lofty complacency exhibited by its writer. For example: "With regard to the particular notion which now finds favor with Professor Henry, it suggests the thought that his observations, notwithstanding their apparent variety and extent, were really limited as regards the weather. For did they, like ours, embrace weather of all kinds, it is not likely that he would have ascribed to the sea-waves an action which often reaches its maximum intensity when waves are entirely absent." (*Preface*, p. 23.) The suggestion that Professor Henry probably made observations only during stormy weather, sounds not a little whimsical in reference to investigations on this subject, scattered over ten years, and along hundreds of miles of sea-coast.

Or once more: "Rightly interpreted and followed out, these aerial echoes lead to a solution which penetrates and reconciles the phenomena from beginning to end. On this point I would stake the issue of the whole inquiry, and to this point I would, with special earnestness, direct the attention of the Lighthouse Board of Washington. Let them prolong their observations into calm weather. . . . . The

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echoes afford the easiest access to the core of this question, and it is for this reason that I dwell upon them thus emphatically. It requires no refined skill or profound knowledge to master the conditions of their production; and, these once mastered, the Lighthouse Board of Washington will find themselves in the real current of the phenomena, outside of which — I say it with respect — they are now vainly speculating." (*Preface*, p. 24.)

And this attitude of condescending dignity is assumed toward one whom he had recognized while in America as our "scientific Nestor," and had extolled as being already "in the van of experimental inquiry," when the banqueted speaker was yet a novice in science.* His placid confidence in his own cherished hypothesis never permits a suspicion that *it* may possibly lie "outside the real current of the phenomena"; and on his self-consciousness no imagination dawns that the rival hypothesis, so magisterially dismissed by him as an *ignis fatuus*, is really a theory, based upon a series of observed facts, and fertile in suggesting explanations of a range of seemingly incongruous effects, otherwise quite beyond the reach of any existing speculation.

So completely does Professor Tyndall seem to himself to have grasped the subject and exhausted its product, that he concludes: "if Professor Henry will but adopt the same views regarding aerial echoes, the acoustic deportment of the atmosphere in haze, fog, sleet, snow, rain, and hail will be no longer a mystery: even those 'abnormal phenomena,' which are now referred to an imaginary cause, or reserved for future investigation, will be found to fall naturally into place, as illustrations of a principle as simple as it is universal." (*Preface*, pp. 24, 25.)

Professor Tyndall thus epitomizes his labors: "In the years 1873 and 1874 this subject received an exhaustive examination, observational and experimental." (p. 321.) *Jamque opus exegi.* — "Thus ends for the present, at all events, an inquiry which I trust will prove of some importance, scientific as well as practical." (p. 319.)

Professor Henry, whose researches on the subject have been much more extensive, — while the Trinity House "has established no facts of practical importance which had not previously been observed and used by the Lighthouse Board," and who has really made a contribution to our knowledge, of far wider reach and higher value, — in the concluding paragraph of his Report speaks thus: "Much further investigation is required to enable us to fully understand the effects

* Lectures on Light: in U. S. — Am. Ed., 1873 (pp. 10, and 1861).

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of winds on the obstruction of sound, and to determine the measure of the effect of variations of density in the air, due to inequality of heat and moisture. But such investigations can only be made under peculiar conditions of weather and favorable localities, with the aid of a number of steamers, and a series of observers, by whom the transmissibility of the air may be simultaneously observed in different directions. . . . . It is the intention of the Lighthouse Board to continue observations in regard to this matter, and to embrace every favorable opportunity for their prosecution under new and varied conditions." (*Lighthouse Report*, p. 117.)

Professor Tyndall has failed to realize the practical importance of acoustic refraction; which is unquestionably a real phenomenon, and which may result from two independent causes or conditions. First, there is the refraction occasioned by differences of aerial currents, suggested by Professor Stokes, in 1857; and, second, the refraction occasioned by differences of aerial temperature, pointed out by Professor Reynolds, in 1874. While he is of course fully aware that the velocity of sound is affected by differences of wind, as well as by differences of temperature, he is not aware that an easy calculation will show the resultant deflection to be in many cases quite considerable. Turning to Section 6 of Chapter I., which treats of the "Refraction of Sound," the only illustration of the subject we find is a reference to the experiment of Sondhauss (now nearly a quarter of a century old), showing the convergence of sound to a focus by the use of a carbonic-acid gas lens in a thin membranous envelope." (pp. 19, 20.) This exhausts the subject.

And yet the observations of Professor Tyndall himself furnish evidence on this point, the true significance of which has entirely escaped him. In his experiments at the South Foreland, there were at first employed on the beach, about forty feet above high-water mark, two fog-horns, each eleven feet long, and an air-whistle with six-inch cups; and on the top of the Dover cliffs, about two hundred feet above these, another set of instruments of precisely the same size and power. "Numerous comparative experiments made at the outset gave a slight advantage to the upper instruments. They therefore were for the most part employed throughout the subsequent inquiry." (*Sound*, p. 263.)

Is it not strange that Professor Tyndall's inquisitive mind neglected to search into the meaning of this "slight advantage"? Or was he at once satisfied that flocculent clouds had something to do with it? Here was a difference, — not accidental, — but confirmed by "*numerous* comparative experiments," and in a direction, too, con-

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trary to that which might have been anticipated; for not only were the lower instruments in denser air, and therefore theoretically in a condition to give a louder sound with the same motive-power, but by being near to the resisting and protecting wall of the sea-surface, were favorably placed for distinctly transmitting their sound to a distance: added to which was the extended wall of chalk-cliff, two hundred feet high, immediately behind the instruments, for reinforcing and reflecting the sound-waves seaward.

What, then, is the true explanation of this apparent anomaly? That the stratum of air two hundred feet above the sea was ordinarily (or when still) cooler than that near the surface, is hardly doubtful. Professor Tyndall has stated for us the well-known fact, that "inasmuch as the air above is colder than that below, the actual velocity on the summits of mountains is less than that at the sea-level." (*Sound*, p. 23.) The difference being, at ordinary temperatures, about one foot per second for each degree Fahrenheit. Here, then, with the admitted fact of the lower portion of the sound-wave moving more swiftly than its upper portion, we have the inevitable condition of a flexure of the horizontal rays of sound upward as they advance; and however slight this refraction, as it is continuous or cumulative, in the course of several miles it must make itself felt. Obviously, the limiting point of tangency with the sea, of the upward bent rays of a given curvature, must be much nearer to the lower source of sound than to the upper; and hence while at the distance of ten miles the curved rays of sound from the top of the cliff might reach the deck of a vessel, those from its base would pass considerably above the vessel.

Whenever a sea-breeze should blow toward the fog-signal, as it would commonly be stronger above, and more resisted and lagging below, the refraction would generally be reinforced by the still greater retardation of the upper part of the sound-waves than the lower part. On those rare occasions where neither of these conditions should exist, that is, neither an unequally retarding wind nor a diminished temperature in the upper strata, there can be no doubt that then the lower instruments would prove the more effective.

Allusion has already been made to the "conspicuous absence" of any research into the prominent and familiar fact of the influence of *wind* on sound-range. Dr. Robinson, in his Report on "Fog Signals" in 1863, remarked that "a gun or bell which is heard several miles *down* the wind, is inaudible at more than a few furlongs *up* it." (*Rep. Brit. Assoc.* 1863, XXXIII. 106.) And Professor Tyndall gives his distinct testimony to the fact, that "it is within the mark to say that

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the gun on October 11th was heard five times, and might have been heard fifteen times as far to leeward as to windward." (*Sound*, p. 309.) Strangely enough, a result so remarkable and so well determined by repeated observation, receives from him no elucidation, and is left by him without even a suggestion toward interpretation! What conceivable condition or arrangement of "flocculence" — that persistent obscurer — could be supposed to have its transparency or opacity to sound multiplied so many times by a simple difference of direction in the wind?

Another instance may be cited of our author's lack of comprehensive insight into the full import of his own observations. He says: "Up to July 3d, all remained enigmatical; but on this date observations were made which seemed to me to displace surmise and perplexity by the clearer light of physical demonstration. . . . . At 2.15 P. M., and at a distance of three and three fourth miles from the station, with calm, clear air and a smooth sea, the horns and whistle were sounded, but they were inaudible. Surprised at this result, I signalled for the guns. They were all fired, but though the smoke seemed at hand, no sound whatever reached us. . . . . We steamed on in the same bearing to two miles, and had the guns fired point blank at us. The howitzer and the mortar, with three-pound charges, yielded a feeble thud, while the eighteen-pounder was wholly unheard." (pp. 268, 269.) "As I stood upon the deck of the *Irene*, pondering the question, I became conscious of the exceeding power of the sun beating against my back and heating the objects near me. Beams of equal power were falling on the sea, and must have produced copious evaporation." (p. 271.) Hence atmospheric "flocculence," and as a result, acoustic opacity. "Curiously enough, the conditions necessary for the testing of this explanation immediately set in. At 3.15 P. M., a solitary cloud threw itself athwart the sun and shaded the entire space between us and the South Foreland. The heating of the water, and the production of vapor, — and air-currents were checked by the interposition of this screen. . . . . The sounds, as I expected, were distinctly, though faintly heard. This was at three miles' distance. . . . . We pushed the test further by steaming farther out. At five and three fourth miles we halted and heard the sounds; at six miles we heard them distinctly." (pp. 272, 273.)

That this interesting experiment furnished a satisfactory test of something more than aerial "flocculence" does not appear to have entered the observer's mind. So preoccupied was his mental vision with a *hypothetical* image, that it had no perception of that *vera causa*,

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the necessary refraction of the acoustic rays under the conditions stated, — the lifting of the waves of sound above the listener's head through the heated atmosphere of the July sun; and the subsequent flattening or unbending of these rays as the lower air grew cooler. That the powerful and penetrating sounds of steam-whistles, fog-trumpets, and cannon — having an easy range of a dozen miles — could be absolutely *extinguished* by vapor-clouds at the distance of two miles appears quite incredible. That such sounds might be entirely deflected away, and so become inaudible in a given direction without losing their range, is entirely conformable to what we know. And that the larger amount of vapor in the lower strata of air should also increase this refraction, by rendering the air more absorbent of heat, is no less accordant with the indications of theory.

Professor Reynolds, to whom belongs the credit of this fine exposition, well remarks: "Here we see that the very conditions which actually diminished the [sensible] range of the sound were precisely those which would cause the greatest lifting of the waves. And it may be noticed that these facts were observed and recorded by Professor Tyndall, with his mind altogether unbiased with any thought of establishing this hypothesis. He was looking for an explanation in quite another direction. Had it not been so, he would probably have ascended the mast, and thus found whether or not the sound was all the time passing over his head. On the worst day, an ascent of thirty feet should have extended the range nearly a quarter of a mile." (*Proceedings R. S.* 1874.)

To conclude this somewhat extended review, the judgment must be pronounced that the additional matter introduced into this new or third edition of "Sound" occupies a space very considerably in excess of its real importance. Had the ill-advised preface been suppressed, and the prolix Chapter VII. been condensed into something like its present "summary," the just proportions of the treatise would have been much better maintained. If, in addition to this, the section on "Refraction of Sound" had been extended and enriched with the pregnant results of the researches of Professor Henry and of Professor Reynolds, the value of the work as an exposition of the present state of the science of acoustics would have been greatly enhanced.

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2. — *Roderick Hudson.* By H. James, Jr. Boston: J. R. Osgood & Co.

If the authorship of "Roderick Hudson" were a secret, we think few people would guess it to be a first novel. It has little of the freshness and none of the crudeness of most such attempts. Its merits and its interest are not such as usually gush from a new-found spring of talent, while its faults are not those of youth and inexperience. Yet the reading public would be puzzled on whom to fix it. Anonymous productions of so much ability are immediately assigned to half a dozen well-known writers, with more or less plausibility; the book in question reminds us of no other; Mr. James has imitated nobody; the only novelist to whose temper of mind there is the least affinity is Thackeray, and few writers resemble one another less. Therefore, to begin with, if "Roderick Hudson" is not what can be called an original work of genius, it is entirely peculiar. As far as one can describe a book in a single phrase, this one is a study of character. There is no plot, strictly speaking; the slight framework which supports the personages being the career of a young village genius who is taken by a munificent acquaintance from the purgatory of a law-office in his native Northampton to study sculpture in Rome. The story follows him, and three or four others whose common tie is in him, through the hopes and fears, the promise and disappointment, of his course. These three or four are, first, Rowland Mallet, the hero's friend and patron; Mary Garland, his cousin and betrothed; Christina Light, his fate: there are several other characters of less importance who are quite as carefully and minutely drawn. There is too much of this minuteness, too much detail. It was not necessary to our comprehension of Rowland Mallet that we should be told all about his father and mother, his grandfather and grandmother, as he inherited nothing from them, except, perhaps, from the last his Dutch coloring and phlegm; but that stolid quality in him becomes an amiable longanimity, not always maintained without struggle; so that we must set down as works of supererogation those two delightful portraits of the silent sea-captain with his weather eye always to windward, and the good housewife who sought consolation for her lost Holland in having the front pavement scrubbed and scoured. And why, as the cousin Cecilia had no part to play in the book, is she so conspicuous a figure; and why, since she is so nice a woman, does the author of her being like her and let us like her so little? With her, the Cavaliere Giacosa, and one or two more, it looks as if Mr.

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James had had these admirable studies in his sketch-book and could not resist transferring them to his canvas, although they have as little to do as lay-figures, or at best the *deus ex machina*. There are no lay-figures in Mr. James's compositions; the perfect finish of each part is like nothing but some performances we once saw given by the leading actors of the Théatre Français in London, during the Commune, when Bressant and Delaunay appeared as walking gentlemen, and Got, the manager, merely brought in a letter on a salver. There is in this elaboration a trace of the influence of M. Tourguénieff, of whom Mr. James is an admirer and student, but the effect is very different from that of M. Tourguénieff's simply grouped supernumeraries.

The central figure, of course, is Roderick Hudson, and we foresee that the undiscriminating will fancy a resemblance between him and Hawthorne's Donatello, but it is scarcely skin-deep. The irresponsibility of the Faun is his greatest attraction, it is Roderick Hudson's most intolerable vice. The character of the hero strikes us as the great failure of the book; the conception is capital and is consistently carried out; but in working it up there occur traits of selfishness and shamelessness which, although natural in themselves, make the relations of others to him unnatural. His personal charm is not felt by us, while his detestable egotism is; we are repelled, and the friendship of Rowland, the constancy of Mary, and even the idolatry of his mother, seem like infatuation. This is a cardinal error, for it leaves the reader outside the sympathies of the whole circle; he has no hold on the electric chain which binds them together. It is due in great part to this, no doubt, that their wonderfully told vicissitudes of feeling leave us cold; it is not that they are unlike real people; they are most real and living, but we do not identify ourselves with them; we never for a moment cease to be spectators; we are intellectually interested, but as unmoved as one may suppose the medical class of a modern master of vivisection to be. Rowland is not meant for the hero, and, like him as we must, we cannot concentrate our sympathies on the second fiddle; at the same time we are very grateful for such a delightful, possible character, if he be not impossibly good; one almost loses patience sometimes with his patience. The heroine is a very fine outline, defined like all the rest with extreme distinctness, but there is a plainness about her which unfits her for her position; it is improbable that a woman so devoid of all but moral grace, and with less of that than positive loftiness, should attract a man of Rowland's cultivation and civilization; there is a similar improbability in Hannah Thurston, which takes the lifelikeness out of that sober picture of American local manners. The noble,

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almost barbarous integrity of Mary Garland is a fine foil to the intricacy of Christina; although much of that young lady's complexity is studied, she is none the less true to nature, which in her means artifice. In her case, as in Roderick's, the beauty and charm which make them irresistible in personal intercourse are lost upon the reader; one feels that she does not deserve the excuses the good-natured Rowland makes for her; if her education and examples have been bad, she is worse; in her better moods she only coquets with her conscience and higher instincts, as other women occasionally coquet with their lower ones; it needed no pinch of fate to make her close the compact with the world, the flesh, and the Devil.

The most faultless character-piece in the whole is Roderick's mother, who is no creation, but a commonplace woman, such as is to be met incessantly both in real life and books; she is given here with a fidelity, a precision and perfection of touch only equalled by some of George Eliot's average women. But not on her only, on Sam Singleton the sincere little painter, on Mme. Grandoni, Mrs. Light, on everybody whom he introduces, has Mr. James bestowed the finest finish; on no one more than on Mr. Barnaby Striker, the Northampton lawyer, and Mr. Leavenworth, the self-made millionnaire. The success of these last types is quite sickening; they are true to the life, without a shade of caricature, and one of the most subtle but unsparing strokes in the whole handling is that they are in the right when pleasant people are mistaken. We cannot give a better sample of the completeness of Mr. James's work than by citing the scattered sentences in which he makes known Miss Blanchard, a tertiary personage, between whom and Rowland there have been possibilities of marriage, faint and vague in his imagination, more positive to hers. "She was an American, she was young, she was pretty, and she had made her way to Rome alone and unaided. . . . . Miss Blanchard had a little money, but she was not above selling her pictures. These represented, generally, a bunch of dew-sprinkled roses, with the dew-drops very highly finished, or else a wayside shrine and a peasant-woman with her back turned, kneeling before it. She did backs very well, but she was a little weak in faces. Flowers, however, were her specialty; and though her touch was a little old-fashioned and finical, she painted them with remarkable skill. Her pictures were chiefly bought by the English. . . . . She talked in a sweet, soft voice, used language at times a trifle superfine, and made literary allusions. These had often a patriotic strain, and Rowland had more than once been irritated by her quotations from Mrs. Sigourney in the cork-woods of Monte Mario, and from Mr. Willis among

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the ruins of Veii. Rowland was of a dozen different minds about her, and was half surprised at times to find himself treating it as a matter of serious moment whether he liked her or not. . . . . He used sometimes to go into the little, high-niched, ordinary room which served her as a studio, and find her working at a panel six inches square, at an open casement, profiled against the deep blue Roman sky. She received him with a meek-eyed dignity that made her seem like a painted saint on a church-window, receiving the daylight in all her being. The breath of reproach passed her by with folded wings. . . . . Rowland reflected that he had never varied in his appreciation of Miss Blanchard's classic contour, but that somehow, to-night, it impressed him hardly more than an effigy stamped upon a coin of low value. . . . . He congratulated her upon her engagement, and she received his compliment with a touch of primness. But she was always a trifle prim, even when she was quoting Mrs. Browning and George Sand, and this harmless defect did not prevent her responding on this occasion that Mr. Leavenworth had a 'glorious heart.'" There is not a name in the book but is the ticket to something as clear cut and closely wrought as this. But what do all these animated varieties of men and women do? They do nothing but talk. There is as great a want of incident as of plot. Their conversations are amazingly clever, and bring out the dispositions of the speakers with consummate skill.

"'Ah, study?' repeated Mr. Striker. 'To what line of study is he to direct his attention?' Then suddenly, with an impulse of disinterested curiosity on his own account, 'How do you study sculpture, anyhow?'

"'By looking at models, and imitating them.'

"'At models, eh? To what kind of models do you refer?'

"'To the antique in the first place.'

"'Ah, the antique,' replied Mr. Striker, with a jocose intonation. 'Do you hear, madam? Roderick is going off to Europe to learn to imitate the antique.'

"'I suppose it 's all right,' said Mrs. Hudson, twisting herself in a sort of delicate anguish.

"'An antique, as I understand it,' the lawyer continued, 'is an image of a pagan deity, with considerable dirt sticking to it, and no arms, no nose, and no clothing. A precious model certainly!'

"'That 's a very good description of many,' said Rowland, with a laugh.

"'Mercy! Truly?' asked Mrs. Hudson, borrowing courage from his urbanity.

"'But a sculptor's studies, you intimate, are not confined to the antique,' Mr. Striker resumed. 'After he has been looking three or four years at the objects I describe —'

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"'He studies the living model,' said Rowland.

"'Does it take three or four years?' asked Mrs. Hudson, imploringly.

"'That depends upon the artist's aptitude. After twenty years a real artist is still studying.'

"'O my poor boy!' moaned Mrs. Hudson, finding the prospect, under every light, still terrible.

"'Now this study of the living model,' Mr. Striker pursued; 'inform Mrs. Hudson about that.'

"'O dear, no!' cried Mrs. Hudson, shrinkingly.

"'That, too,' said Rowland, 'is one of the reasons for studying in Rome. It's a handsome race you know, and you find very well-made people.'

"'I suppose they're no better than a good tough Yankee,' objected Mr. Striker, transposing his interminable legs. 'The same God made us.'

But the conversations are often too prolonged, and the author endows all his personages with his own turn for analyzing, in consequence of which they all occasionally talk alike, blurring for the moment their individuality. The effect of this perpetual analysis is fatiguing; the book never ceases to interest, but it taxes the attention like metaphysics. There are signs that it occasionally wearied the author; while such pains and care are bestowed upon his characters, his style is sometimes slipshod. He says, "deceased brother" for "dead brother," and uses other equally objectionable expressions; how else did he come to write such a sentence as the following? "She herself was a superior musician, and singers found it a privilege to perform to her accompaniment." On the same ground we account for his putting the same word into everybody's mouth, "hideous" for instance, which Christina, Rowland, and Roderick all use at different times in a moral sense, yet which is not a common word so applied. This, however, is allied to an old fault of Mr. James's, which is the repetition of one striking word or phrase until it loses its force; the word "formidable" is unusual and impressive, but it occurs so often in the latter part of the present book that any other would express as much; there is so much about "passion" and "passionateness" that at length the fervid sound falls coldly on the ear of the unimpassioned reader. This is curious carelessness in a writer of such remarkable flexibility of thought and plastic power of expression. His control of language is like the facility of a great pianist; there is no turn or running accompaniment of thought, no cadence, no modulation, that is not executed with the easiest precision. His language owes something of its malleability to his command of French; but this sometimes carries him too far into constructions that are not idiomatic, and a use of words which is not in the genius of the mother tongue, as, for instance, his favorite "supreme," which he

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sometimes takes in its English significance of highest, and sometimes in its French meaning of final.

It was to be expected that more would be made of the background and side-scenes in a story whose action goes on chiefly in Rome and Florence, but Mr. James has refrained with almost stoical firmness from the opportunities and temptations which they offered. Readers of his tales and sketches of travel will find but few of those incomparable passages, half descriptive, half suggestive, in which the psychological bearings of outward things are so delicately hinted; he has done wisely, no doubt, in using his exquisite gift sparingly, and wherever these bits occur they greatly enhance the situation.

Looking at the book as a whole, it is like a marvellous mosaic, whose countless minute pieces are fitted with so much skill and ingenuity that a real picture is presented, but with an absence of richness and relief, of all that is vivid and salient; there is a pervading lowness of tone, and flatness of tint. This should not be the impression left by a novel of remarkable talent; we think, however, that it is not the result of a failure to produce the desired effect, but of a mistaken aim. The method, too, is a mistaken one; no aggregate of small particles, however cunningly put together, will produce the effect of honest cutting and shaping from the piece; it may be *marqueterie*, or a Chinese puzzle, but it will not be art. Moreover, such work has the disagreeable property of making criticism seem like picking to pieces.

From these strictures the last two chapters must be excepted. The story has the immense merit of rising to a climax at the end; there is more breadth and movement in the final twenty-five pages than in all the rest of the book. We have heard it objected, that Mr. James has resorted to a hackneyed expedient for getting rid of a troublesome hero; but there is nothing hackneyed in his way of using it. The effect falls short of what it might have been, because author and reader are still left looking on, curious, speculative, philosophical; we stand apart and watch the working of Rowland's anguish, and note the "magnificent movement" of Mary Garland's despair. But the close of Roderick Hudson is beautiful, powerful, tragical; it is intense, yet not overstrained; all it lacks is to have been told with more human feeling.

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3. — *Insectivorous Plants.* By CHARLES DARWIN, M. A., F. R. S. With Illustrations. New York: D. Appleton & Co. 1875.

WE have all been long familiar with the remarkable insect-catching properties of the North Carolina *Venus's Fly-trap* (*Dionæa muscipula*),

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and have looked with a curious interest at the pictures of its closed leaves with their chevaux-de-frise of marginal spikes, crossed over the body of a captured fly. This was generally regarded as a sort of singular accident, or at least as an exceptional phenomenon, quite peculiar to Dionæa; and beyond occasional speculations as to whether the trapped insects were utilized in any way for the nutrition of the plant, but little attention was paid to the subject, and it was not considered a matter of any great importance.

But for the last ten or fifteen years evidence has been accumulating among botanists that this occurrence is neither so rare nor so unimportant as was formerly supposed. The capture of insects by Dionæa, instead of being an occasional accident, is a constant and habitual phenomenon. Many different kinds of insects and other articulates are taken in this way. Dr. Canby, of North Carolina, collected fourteen leaves of Dionæa growing in its natural site, all of which had caught their prey, including altogether one fly, three ants, one spider, one centipede, and eight beetles. According to the observations of Dr. Canby, as well as those of Mrs. Treat of New Jersey, the same leaf will sometimes re-expand and capture a second or even a third insect, after disposing of the first. It is certain that the insects thus caught are not only employed for the nutrition of the plant, but that this is a main source of supply of the nitrogenous material required for its tissues. Similar facts have also been observed in other species of plants; and the capture of various kinds of articulate animals, in greater or less abundance, as a means of livelihood so to speak, is now fairly recognized as a natural phenomenon, not only in Dionæa, and in six or seven different species of Sundew, but also in Aldrovanda, Drosophyllum, Roridula, Byblis, Pinguicula, Utricularia, and Genlisea. It appears that these are in reality insectivorous plants. They possess certain organs of such structure and properties that they inevitably, in the natural course of things, attract, seize, and destroy their animal prey, as regularly and systematically as the spider captures his fly. In the case of Dionæa this is accomplished by the sudden trap-like closure of the irritable leaves. In other instances, as in that of the Sundew, the clasping movement is a slow one; but the insect is held entangled by a viscid secretion, and so gradually embraced by the bending filaments. Sometimes, as in Byblis, Roridula, and Drosophyllum, where there is no movement of the leaves, it is their viscid secretion alone which effects the capture, like so much bird-lime. In Pinguicula, there is both a viscid secretion and a movement of the leaves. Two of the species mentioned, namely, Aldrovanda vesiculosa and Utricularia vulgaris, are water-plants; they entrap, of course,

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aquatic animals, mostly crustaceans, worms, and various insect larvæ. In Utricularia, the capturing apparatus is an irregularly hemispherical bladder, provided with a sort of valve, opening inward. This valve the intruder easily pushes aside on entering; but it closes again and imprisons him securely when he is once in. Mr. Darwin found, on one occasion, as many as ten little crustaceans in a single bladder of Utricularia neglecta; and Professor Cohn, of the Institute of Physiological Botany at Breslau, after immersing a fresh plant of Utricularia vulgaris in water abundantly inhabited by crustaceans, found the next day nearly all its bladders containing captured prey.

Mr. Darwin's attention was first directed to the insect-catching properties of the Sundew in 1860. His very numerous and careful observations have accordingly extended over a period of several years; and their results are recorded, in a systematic form, in the present volume. All the plants now known or reasonably suspected to be insectivorous are described at some length, but the most elaborate and original portion of the book relates to the Sundew; and we shall confine ourselves mainly to the investigations of the author on this species and its singular habits of life. The method of observation employed, and the manner in which its results are given to the reader, form a model for investigations of this kind. Everything is both done and told with a precision which leaves nothing to be desired; and no one can read the book without a sense of genuine satisfaction, at acquiring a knowledge so definite and based upon data so clearly and accurately stated. A few examples may be selected from among many, to illustrate this feature, which is a prominent one throughout. In speaking of the movement of the leaf-tentacles, when excited by the contact of raw meat, the author says (page 24): —

"Another tentacle, similarly treated, distinctly though slightly changed its position in ten seconds. In two minutes and thirty seconds it had moved through an angle of about 45°. In five minutes it had moved through 90°. And when I looked again, after ten minutes, it had reached the centre of the leaf; so that the whole movement was completed in less than seventeen minutes and thirty seconds."

On page 236, after enumerating various trials to determine the mode of transmission of the exciting impulse through a leaf, he says: —

"In ten other experiments, minute bits of meat were placed on a single gland or on two glands in the centre of the disk. On eight of these leaves, from sixteen to twenty-five of the short surrounding tentacles were inflected in the course of one or two days. On the two

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remaining leaves, almost all the short tentacles of the disk were inflected."

While estimating the vigor with which the tentacles bend, under the influence of a stimulus, he says (page 254): —

"The exterior tentacles, considering their delicacy, are inflected with much force. A bristle, held so that a length of one inch projected from a handle, yielded when I tried to lift with it an inflected tentacle, which was somewhat thinner than the bristle."

The plant upon which most of Mr. Darwin's observations were made is the Round-leaved Sundew (*Drosera rotundifolia*). The corresponding American species, which bears the same name, if not absolutely identical with the English, resembles it so closely that it may easily be recognized from a description common to both. It is a low, perennial, herbaceous plant, growing in open upland bogs, and presenting a little cluster of five or six leaf-stems with rounded disk-like leaves, usually spread out in a nearly horizontal position. The leaves are provided, on their upper surfaces, with numerous, reddish-colored, gland-bearing bristles, or filaments, to which Mr. Darwin gives the name of tentacles, from their power of moving or bending, like the tentacles of an invertebrate animal. The gland situated upon the extremity of each tentacle is surrounded by a little globule of clear, colorless, viscid secretion; and these globules glitter in the sunshine like so many dew-drops, whence the name of the plant itself. Notwithstanding its unobtrusive appearance and delicacy of texture, the Sundew is probably as rapacious a destroyer of insects, in proportion to its size, as Dionæa. In a dozen plants collected at random, and bearing, in all, fifty-six fully expanded leaves, Mr. Darwin found that thirty-one leaves, that is, more than fifty-five per cent of the whole, had adhering to them dead insects or their remains. In one plant, every one of its six leaves had caught an insect. In many instances the same leaf had caught more than one; and in one case the remains of no less than thirteen distinct insects were found upon a single leaf.

The mechanism of the capture, in Drosera, is as follows: —

The insect, usually a small fly, attracted perhaps by the aspect or odor of the plant, alights near the centre of the leaf, upon some of the short tentacles situated at that part. Its feet are entangled by the viscid exudation; and as they sink into it, they touch, ever so lightly, the glands by which it is secreted. The central tentacles, with which the intruder first comes in contact, do not, as a rule, themselves change their position. But from them, as soon as their glands are stimulated by the touch of a foreign body, an impulse is sent outward, through the intervening tissues, to the longer tentacles about

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the margin of the leaf. These begin slowly to curve inward; and, by bending over from all sides toward the centre, they reach in succession the body of the insect, and at last close round him in a circle from which there is no escape. Each gland at the same time secretes more abundantly than usual; and the viscid fluid, which covers the insect, blocks up his breathing-pores, and no doubt kills him by suffocation.

This remarkable fact, of the transmission of a motor impulse from one part of the leaf to another, is one of the most important results established by Mr. Darwin's observations. The evidence of its reality appears to be unquestionable. The parts immediately endowed with the power of motion are the filamentous portions, or pedicels, of the tentacles. But these organs are not directly irritable; and a mechanical stimulus, applied either to their surfaces or their substance, does not cause them to bend. They were roughly and repeatedly rubbed, and bits of raw meat or other exciting substances were placed upon them at various points, without producing any distinct movement. Wounding the blade of the leaf with a lancet, or pricking it repeatedly with a needle, was equally ineffective. On the other hand, a bit of soft cotton thread, or, better still, a piece of human hair, or a fragment of pounded glass, weighing respectively from $\frac{1}{8000}$ to $\frac{1}{70000}$ of a grain, if placed in contact with one of the exterior *glands*, will cause its pedicel to bend through an angle of at least 180°. Small bits of meat were left for a considerable time on the pedicels without perceptible effect; but if they were then pushed upward, so as just to touch the glands, in a minute the tentacles began to bend.

Even here, the impulse which produces motion is transmitted through a considerable distance, amounting to nearly twenty vegetable cells placed end to end; for the part of the pedicel which actually bends is not that in immediate proximity to the gland, but the portion near its base. Throughout its upper two thirds the pedicel remains straight, or nearly so, and is only carried inward by the curvature of its basal portion. The fact of transmission is still more evident when the exterior tentacles become inflected without either their pedicels or glands being touched at all. If the central glands of a leaf be irritated by repeated contact of a stiff camel's-hair brush, the marginal or submarginal tentacles bend inward. Particles of meat, dead flies, bits of dried moss, cinders, or pounded glass, if placed on the central part of a leaf, are well embraced by its outer tentacles in periods varying from one to twenty-four hours. Consequently the impulse, in these cases, must have travelled from the central glands, down the whole length of their own pedicels, and across the intervening part of the leaf-blade, to the pedicels of the exterior tentacles.

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Such a phenomenon at once recalls the transmission of motor impulses by the nervous system of animals; and it has been therefore assumed, in some quarters, that organs analogous to nerves, in structure as well as in function, must exist in the vegetable tissue. But this assumption is unwarranted by any direct evidence, and is quite unnecessary for a satisfactory explanation of the facts. When a motor impulse is transmitted, in the animal body, from one part to another, the nerve fibre which is the organ of communication is thrown into a state of polarity throughout its length, thus causing a visible contraction in the muscle where it terminates. This is the regular and physiological process by which during life the muscles are called into activity. But a muscular fibre may be made to contract experimentally, by an artificial stimulus applied to its own substance. Now, suppose the touch of a stiff hair or a bit of pounded glass to excite, in a gland of the Sundew, some change in the molecular condition of its contents. This change would produce no visible movement in the gland itself, because the tissue of the organ is not contractile; but it might cause a similar change in the contents of the next succeeding cells, and so on, reaching at last the base of an exterior tentacle. Here it meets with contractile tissue, and a movement consequently takes place. The contractile tissue of the pedicel may be excitable by a molecular change in the contents of adjoining cells, though not by a mechanical stimulus applied to its own substance; just as the fibres of the optic nerve, which are insensible to the direct action of light, may be excited to activity by a luminous ray falling on the retina. Many varied and elaborate experiments were performed by Mr. Darwin on the rapidity of this transmission of the motor impulse in Drosera, the direction which it follows in different cases, and the special tissues of the leaf through which it is effected; but the most interesting fact, in connection with vegetable physiology, is that of its existence.

The immediate mechanism of movement in the tentacles is not clearly understood; and the same may be said of the motions, whether excited or periodical, known to be exhibited by other plants. Notwithstanding the interest which attaches to these movements, and the repeated attempts at their investigation, in the leaves of the Sensitive plant and the Wood-sorrel, and in the stamens of the Thistle family, no fully satisfactory theory of their production has yet been reached. There is evidence that the movement is accompanied by increased or diminished turgescence of the cells in various parts of the moving organs; and it has even been demonstrated, in some instances, that fluids exude from the cells of the part which

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contracts and accumulate in those which expand. But is this fluid expelled under an active compression exerted by the cell, or does the cell wall shrink from its own elasticity because the fluids are discharged by a sudden action of exosmosis? Do the cells which are distended become so because they attract additional fluid by endosmosis, or are they simply receptacles, into which the fluid finds its way when expelled from other parts? It is just at this point that all explanations fail. Mr. Darwin is inclined to connect the power of movement in the tentacles of Drosera with another internal phenomenon, namely, that of "aggregation," so called; a remarkable conglomeration in distinct masses of the protoplasmic matter of the cell-contents. This aggregation takes place in the cells, both of the glands and their pedicels, simultaneously with the bending of the tentacles, and again disappears when the tentacles re-expand. The author suggests that the contraction of the cell wall may be due to an action of the same kind with that which causes aggregation in the albuminous contents of the cell cavity, namely, an approximation of its molecules. Still, this process is neither an indispensable requisite nor a determining cause of the motion, of the tentacles; since aggregation may occur, under some conditions, without movement, and movement may take place without aggregation. It is certain that the concave portion of a bending tentacle is in a state of active flexion, and is not simply pushed over by the turgescence of its convex side. Mr. Darwin on one occasion succeeded in snipping off with a pair of scissors the convex surface of an inflected tentacle; when the curvature of the remainder immediately became more pronounced, and went on increasing until it formed a complete circle. Neither in this case nor in any other was it possible to detect any wrinkling of the surface of the tentacle at the bending part, or of the cells in its interior; though they might be expected to show such a wrinkling if they were simply collapsed from an exosmosis of their fluids. After all, the only thing we really know of the contraction of the tentacles, so far at least as regards its mechanism, is that they contract. The tissues on the concave side are of course diminished in volume and those on the convex side are increased; but it is not evident how these changes in condition are effected, or in what way they are related to each other.

Although the tentacles are more or less stimulated to movement by any solid object left in contact with the glands, there is a great difference in the intensity of the action caused by substances of different kinds. The most efficient stimulants are those which contain nitrogenous organic material capable of being dissolved by the secretions of the plant; and of all these substances, raw meat acts with

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the greatest promptitude and energy. Thus particles of glass, coal-cinder, gold-leaf, cork or blotting-paper, though they sometimes became well embraced by the exterior tentacles, often acted irregularly, or caused only slight and slow movement; while minute flies or bits of raw meat, afterward placed on the same leaves, produced rapid and complete inflection. A similar difference of action was shown by nitrogenous and non-nitrogenous matters dissolved in water. Solutions of gum arabic, of starch, of sugar, olive oil, and even dilute alcohol produced no movement; the same leaves, in some instances, becoming afterward closely inflected, when treated with bits of meat. On the other hand, drops of milk, of albumen from the egg, of infusion of meat, mucus, saliva, and solutions of gelatine all acted with decisive effect. Altogether, trials with these nitrogenous fluids were made upon sixty-four leaves; out of which number sixty-three had their tentacles well inflected in consequence of the application. The influence of nitrogenous fluids is shown still more distinctly in the numerous experiments with watery solutions of the ammoniacal salts; since these substances act in surprisingly minute quantity and dilute form. The carbonate, nitrate, phosphate, and sulphate of ammonia were all tried, as well as several salts of ammonia and the organic acids. Of these substances, phosphate of ammonia was by far the most active, or at least produced a perceptible result when used in the smallest quantity; but all of them were extremely efficient in causing inflection of the tentacles. Thus there is a decided difference in action between nitrogenous and non-nitrogenous organic solutions. The former, as a rule, cause inflection of the tentacles, the latter do not. Mr. Darwin, however, enumerates, on page 78, among the non-nitrogenous liquids, infusion and decoction of tea-leaves, as well as solutions of theine, which he found to be inoperative. But theine is a nitrogenous substance, having the formula $C_8 H_{10} N_4 O_2$. We are at a loss to account for this curious oversight.

The most interesting fact shown by Mr. Darwin, next to the excitability of the glands and the movement of the tentacles, is that solid nutritious matters, placed upon the leaves, are actually *digested*. This is accomplished by means of an acid fluid secreted by the glands; a sort of gastric juice, produced, like that of animals, under the influence of the contact of digestible matters with the secreting organ. The secretion of the glands of Drosera, in their unexcited condition, is, as we have seen, viscid, transparent, and colorless. It is neutral in reaction, or only occasionally and faintly acid. The fluid surrounding the glands on thirty different leaves was tested with litmus paper; and in twenty-two of these leaves no perceptible acidity

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was present. In the remaining eight there was some evidence of an acid reaction, but this was exceedingly feeble and sometimes doubtful. The case is very different with glands which are excited by the contact of solid substances, either organic or inorganic. Fourteen leaves, in which the secretion was free from any perceptible trace of acidity, were treated, some with particles of broken glass, others with cubes of coagulated albumen, others with bits of raw meat; and when, after twenty-four hours, their tentacles had become more or less completely inflected, the secretion was found to be distinctly acid. The secretion becomes acid, not only on the glands at the centre of the leaf where the foreign substances are placed, but also on those of the marginal tentacles while yet in process of inflection, before they have reached the central part, and consequently before they have themselves touched the exciting substance. Thus the stimulus which causes secretion, as well as that which produces movement, may be transmitted from one part of the leaf to another, through the intervening tissues. Mr. Darwin testifies that he has tried "hundreds of times" the secretion on the disks of leaves which were inflected over various objects, and has never failed to find it acid. This reaction increases in intensity after the tentacles have remained for some time closed over a foreign substance.

The specific character of the acid thus produced was not fully ascertained. Various trials were made by Professor Frankland to determine its nature, but without complete success, owing to the small quantity obtainable for experiment. It was shown, however, to be neither hydrochloric, sulphuric, oxalic, tartaric, nor formic acid. The evidence on the whole indicated that it was probably an organic acid, similar in character to the acetic or the fatty acids.

The effect of the continued action of this acid secretion upon solid nutritious substances is that they become softened and dissolved, and the liquefied materials are afterward absorbed. The method used for investigating this point was similar to that employed in experiments with the gastric juice of animals. Small cubes of coagulated albumen, with their edges and angles sharply cut, were placed upon the leaves and examined at various times after having been clasped by the tentacles. After some hours their edges and angles were rounded off, the masses themselves being enveloped in a transparent fluid. In about two days they were often completely liquefied; and later still both the cubes and the fluid had disappeared. Bits of coagulated fibrin, of delicate areolar tissue, and even of cartilage, were affected in a similar way. Small pieces of roasted meat were softened and liquefied from the surface inward, the muscular tissue being gradually

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disintegrated and the fibres losing their characteristic transverse striations. As a rule, the albuminous and albuminoid substances, and digestible tissues composed of them, were found to undergo liquefaction; while the epidermic tissues, such as nails, hair, and feathers, and non-nitrogenous organic matters, such as solid fat, starch-grains, and cellulose, were unaffected, though left in contact with the leaves for four or five days. The acid secretion of the Sundew accordingly shows a striking analogy, both in its properties and action, with the gastric juice of animals, which is also acid, and which digests albuminous matters, but leaves starch and cellulose unchanged.

The analogy is carried still further by the fact that its acid reaction is essential to the digestive power of the Sundew secretion; and that this power may be temporarily arrested by neutralizing its acidity, and again brought into action by the addition of another acid. Solutions of carbonate of soda were used for the purpose of neutralizing the acid reaction, and dilute hydrochloric acid for restoring it. Cubes of albumen, which remained in the first case unaltered for twenty-four hours, were nearly or quite dissolved by the next day, after the secretion was again made acid.

Thus it appears that the plant not only seizes and holds animal matters brought in contact with its leaves, but it also digests them; that is, reduces them to the liquid form in which they are fitted for absorption. The author believes that the secretion by which this is accomplished resembles in all respects the gastric juice of animals; that it acts by virtue of containing a ferment like the pepsin of the gastric juice; and that, as he expresses it, the ferment in both cases is closely similar, if not identically the same.

This, we think, is doubtful. Indeed Mr. Darwin, in this part of his book, seems to have been led into a singular confusion with regard to the combined action of an acid and a ferment, and the experimental evidences of their existence. On page 94 he says: "The best and almost sole test of the presence of some ferment analogous to pepsin in the secretion appeared to be to neutralize the acid of the secretion with an alkali, and to observe whether the process of digestion ceased; and then to add a little acid, and to observe whether the process recommenced. This was done, and, as we shall see, with success."

And again, on page 96: "From these experiments we clearly see that the secretion has the power of dissolving albumen; and we further see that if an alkali is added the process of digestion is stopped, but immediately recommences as soon as the alkali is neutralized by weak hydrochloric acid. Even if I had tried no other experiments than these, they would have almost sufficed to prove that the glands of

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Drosera secrete some ferment analogous to pepsin, which, in presence of an acid, gives to the secretion its power of dissolving albuminous compounds."

It is hardly necessary to say that these experiments do not prove in the least the existence of a ferment in the secretion of Drosera. They only show that the presence of an acid is essential to its digestive action, which is suspended if it be rendered neutral or alkaline. In the gastric juice of animals, the pepsin, or organic ferment, may be thrown down as a visible precipitate by the action of heat or of alcohol. The secretion, thus deprived of its pepsin, is powerless for digestion, though it may still be acid; and the pepsin-precipitate, when redissolved in water, will again exert its digestive power, if the solution be slightly acidulated. This palpable demonstration of a ferment in the gastric juice, as equally essential with its acid ingredient, is wanting in the case of the Sundew secretion. It might be difficult to carry out such an experiment with the secretion of Drosera, owing to the minute quantity to be obtained. Mr. Darwin cut off a large number of leaves which had been moderately excited by the contact of pounded glass, and obtained from them a watery extract of slightly acid reaction, which he tested by immersing in it cubes of albumen, to see whether they would be digested, but without success. He accounts for the failure by supposing that the secretion of the ferment requires a previous absorption by the glands of soluble animal matter; but, at all events, it was not obtained in this way. The only evidence for the existence of a ferment in the secretion of the Sundew appears to be the fact that this secretion will dissolve small quantities of solid albuminous matters; and these substances are digested, so far as we know in animals, only by aid of such a ferment. But this evidence is hardly more than inferential.

In point of fact, digestion by the gastric juice, in animals, is something more than a simple solution. The albuminous matters are not merely liquefied. They are chemically changed, and converted into a new substance, the so-called "albuminose" or peptone; and this substance is distinguishable from albumen or fibrin by definite characters. Coagulated fibrin, if subjected to the action of a dilute acid alone, with the aid of continuous warmth, will be softened and gelatinized, and after a time dissolved; but it is not converted into albuminose, and may be precipitated again by neutralizing the fluid with an alkali. On the other hand, if pepsin be present it undergoes a true digestion, and is no longer precipitable by an alkali. This is an essential feature of the digestive process, and is important for the nutrition of the animal. For if the digested matters in the stomach

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were simply held in solution by an acid fluid, when absorbed into the circulation they would be precipitated by contact with the plasma of the blood, which is alkaline. It is possible that in plants this necessity does not exist, since the juices of the vegetable parenchyma have generally or always an acid reaction.

All things considered, we cannot help thinking that the analogy between the secretion of Drosera and the gastric juice of animals, in Mr. Darwin's book, is too closely drawn. They are no doubt alike in function, so far as regards the disintegration and liquefaction of nutritious material. But their identity of composition is far from being demonstrated; and especially the evidence of an organic ferment in the vegetable secretion is very imperfect, as compared with that of pepsin in the gastric juice.

The whole subject of the capture and digestion of insects by plants is a most interesting one, and shows another remarkable relation between the two organic kingdoms. Insects suck the juices of plants, and lay their eggs in the leaves or under the bark, and so take their pay for services rendered in fertilizing the flowers. But plants also devour insects, and make up for their scanty roots or insufficient soil by absorbing albuminous matter ready made from the bodies of their victims. Do plants also feed upon each other? Mr. Darwin found that the Sundew leaves certainly injure seeds left in contact with them, perhaps by absorbing some of their organic ingredients. This is still more probable in the case of Pinguicula, or Butterwort; the leaves of which, by means of their viscid secretion, catch not only insects, but many leaves and seeds belonging to other plants. Several specimens, gathered at the same time, were found to have sixteen seeds, belonging to nine different species, adhering to fourteen of their leaves. Seeds of the cabbage and other kinds, applied to the leaves of Pinguicula, caused inflection and active secretion from the glands; and there was evidence, not only that the seeds were injured, and in many cases killed, but that the glands had absorbed from them some substances which were no doubt to be used for the nutrition of the plant.

The marauding habits of Drosera and other vegetables, so fully described by the author of "Insectivorous Plants," suggest another consideration in regard to insects which prey upon each other. The Sundew spreads out its sensitive tentacles in the air; and when some passing fly has alighted on its disk and become entangled in the secretion, they close over his body with mathematical precision and suck out its nutritious juices for their own benefit. The little ant-lion digs a circular pitfall in the live sand, and lies in wait at the bottom

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until some incautious intruder has found his way in; and, when his strength has been exhausted in vain struggles to escape, seizes and devours him. Is not the plan thus laid for capturing insect prey an inevitable result of the organization of the animal as well as of the plant; and is it not carried out by a sort of physiological fatality, as imperative in the one case as in the other?

4.—*Lorenzo de' Medici il Magnifico.* Von. Alfred von Reumont. Leipzig. 1874. 2 vols. 8vo. pp. xxiii., 606; xviii., 604.

At the close of the last century a Liverpool attorney published a life of the great Florentine banker, statesman, and poet, known in history as Lorenzo de' Medici, which has since enjoyed a popularity seldom reached even by works of far greater merit. The novelty of the subject, but even more the novelty of the treatment, contributed to make Mr. Roscoe's success as splendid as durable, both at home and abroad, for he may fairly be said to have introduced to the Italians one of their greatest men. In spite of many grave defects, this work will doubtless long remain one of the most entertaining historical monographs in the language. Its distinguishing feature is a judicious blending of the political, social, and literary elements of the period, producing a picture of great brilliance and interest, but which is to good history what Dubufe's Prodigal Son, for instance, is to good art. The utterly false conception which Mr. Roscoe conveys of his hero has already been fully exposed by Sismondi, and later by Villari* whose views have been reproduced by Trollope in his history of Florence, and the new methods of political and literary history have long ago outstripped a work, the best part of which is but second-hand and incomplete. The interest of the period itself remained, and continued the popularity of a book for which no better substitute could be found.

This interest has, if possible, increased of late years, as the importance of the Italian Renaissance for literature and art has been more clearly recognized, so that a new work on Lorenzo de' Medici could not have appeared at a more opportune time. Von Reumont's book fills the want long felt of an exhaustive treatise upon the political, social, and literary phases of Italian (and, in a more restricted sense,

* In his Storia di Girolamo Savonarola e de suoi tempi (2 vols. Florence: Le Monnier), of which there is an excellent translation by Horner in the History of Girolamo Savonarola and of his Times. 2 vols. London: Longman & Green, 1863.

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Florentine) life during the latter half of the fifteenth century. The new material at the disposal of the historian of the present day is very large, especially in Italy, where, within a few years, access has been granted to archives never before open to the public, while the rearrangement of municipal and provincial archives has brought to light many valuable and interesting documents.

The book before us is the last of a long series of contributions to Italian art, literature, and history, by one whose training and opportunities have made him one of the best living authorities on these subjects. Alfred von Reumont, born at Aix-la-Chapelle in 1808, after taking his degree in law, entered the diplomatic service of Prussia, and was sent in 1829 to Florence, where, after service at Constantinople, Rome, and London, he became *chargé d'affaires* to Tuscany, and has since then resided in Florence, devoting himself to Italian history and art. It is probable that his previous work has been of a preparatory nature, and that his Lorenzo de' Medici is the accomplishment of the wish of his life, the fruition of the author's ripest studies.

The disposition of his material is as follows: The first book contains an account of Florence and the Medici to the death of Cosimo, Pater Patriæ. This period (from the end of the twelfth century to 1464) includes the rise of the Medicean family, the development of Florentine democracy, the rise and progress of art and commerce, the rivalry of the Albizzi and Medici, the defeat and triumph of Cosimo, and the political affairs of Florence to the death of the "Father of his country." The second book embraces the life of Piero de' Medici and the youth of his son Lorenzo, in which period fall the conspiracy of Diotisalvi Neroni and his friends, Lorenzo's education, marriage, and travels, and the brilliant social life of Florence. The third book contains an account of the conspiracy of the Pazzi and the war with Rome and Naples, Lorenzo's famous journey to the latter State, and the peace which was the result of his bold move. The fourth book is in many respects the most interesting portion of the whole work, containing an exhaustive account of the Medici in their relations to literature and art. This section occupies more than three hundred pages, and is, we presume, the most complete treatise extant on this subject.

The fifth book describes the development of the Medicean supremacy, the consequent changes in the Florentine constitution, and the efforts of Lorenzo to maintain the balance of power. The sixth and last book contains the closing years of Lorenzo's life, the condition of public affairs, finances, etc., in 1490, life in Florence, and especially Lorenzo's own mode of living, the opposition and Savonarola, and the

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death of Lorenzo. In a supplement the author gives a convenient chronological view of the entire work, genealogical tables of the Medici, Pazzi, Soderini, Visconti, and Sforza families, an account of Lorenzo's death-bed, and a bibliography of works relating to this period. We regret to say that this work suffers from that chronic German complaint, want of index, the lack of which is very insufficiently supplied by the table of contents.

The author has preserved the due proportions of his materials; the literary and social do not outweigh as with Roscoe the pure historical side, while a glance at the table of contents will show they are not neglected. On the contrary, the author has presented a picture of the social and literary life of Florence in the latter half of the fifteenth century unrivalled for completeness and accuracy. He is singularly moderate in his judgments, and like his friend Gino Capponi* prefers to let his readers draw their own inferences from the facts he has carefully gathered and placed before them. If he does not assume a denunciatory tone towards Lorenzo, he at least does not conceal or garble the facts in regard to him, which are, after all, sufficiently condemnatory in themselves.

It seems at first sight strange that a city (we should say State, but Florence was the State for so many years that it is hard to separate them), the one political fear of which was that one of its own citizens should become its tyrant, should fall under the yoke of such a family as the Medici, who first plundered it, and then destroyed forever its independence. The hold of the Medici upon the State was but temporarily relaxed from the time that Cosimo returned from exile in 1434. The State drove them out several times, but they always returned to fix themselves more firmly on its vitals, until the body corporate was too exhausted to do aught but suffer. The early history of the family is buried in an obscurity which Von Reumont cannot clear up. They did not belong to the historical families of Florence, and the first trace of them appears near the end of the twelfth century. A hundred years later, one of them, Ardingo, was one of the Priors, and in 1296 *gonfaloniere*, which office was filled three years later by his brother Guccio. The sarcophagus which once held the latter's remains bears the well-known coat-of-arms of the family and that of the guild of the *calimala* (woollen cloth), to which he belonged. The origin of the family as well as of its armorial bearings is absolutely unknown. By some the origin of the balls (*palle*, hence the name *palleschi* as applied to the adherents of the Medici) has been

* See "North American" for October, 1875.

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carried as far back as Perseus and the apples of Hesperides, others refer them to the time of Charlemagne, and claim that they represent the hilly region of Mugello. Others still think they indicate descent from some knight who assumed as his arms the dents left in his shield during some combat with a giant. Those more moderate in their views attribute the balls to the supposed medical origin of the family, and it has been hinted that they were in some way connected with the pawnbrokers' sign. All these stories, it is needless to say, have no foundation.

The family belonged to the *popolani*, and not until the latter half of the fourteenth century did any member of it assume a prominent position in Florentine politics. Then Averardo (surnamed Bicci) and his cousin Salvestro made the name well known. The latter, who was several times *gonfaloniere*, is best known from his connection with the celebrated *Ciompi* riot in 1378. Averardo was the head of the afterwards famous Medici family, and laid the foundation of the wealth to which so much of its success was due. His grandson was Cosimo, Pater Patriæ, Lorenzo's grandfather. Von Reumont draws a darker picture of him than is usually given. He was of a retiring disposition, simple in his tastes and carefully concealing the part he took in the affairs of the State. He inherited a large fortune, and increased it greatly by his own efforts, beginning that unfortunate system of peculation which led to such disastrous results in Lorenzo's day. How great Cosimo's influence was, may be seen by the fact that he compelled Venice and Naples to make peace with Florence by withdrawing his credit from them. His conscience was not, however, clear as to the means by which part at least of his fortune had been acquired, and the large sums he spent upon the building of churches and other religious edifices give the measure of his uneasiness about the future. When he came to die, two things troubled him: first, that he had not done as much good as he had desired, and been able to do; and second, that he left his son Piero in feeble health.

This sickly son, surnamed the Gouty, occupies an unfortunate position between his celebrated father and his still more famous son. He was, however, a person of much ability, and managed to transmit unimpaired to his son the power he had inherited from his father. He died in 1469, fifty-three years old, and was, so to speak, succeeded by his son Lorenzo, afterwards termed *il Magnifico*, then twenty-one years old.

One of the most difficult points in the history of the Medici (before the *principato*) is to fix with certainty the nature and extent of the political power they enjoyed in the commonwealth. They were

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regarded as princes (after the conspiracy of the Pazzi the State gave Lorenzo a body-guard), but held no public position, and yet were able to direct the commonwealth as their own business, appropriate its revenues, wage war, make alliances; in short, for all practical purposes they were as much "tyrants" as the rulers of Milan and Verona. Von Reumont gives a tolerably clear idea of the tenure of the Medici power in the first volume of his work, page 292, *et seq.*, and some light is also thrown on the subject from Lorenzo's private journal, in which, following the example of his ancestors, he has jotted down the most memorable events of his life. He says that the second day after his father's death the principal men of the city and State came to his house to condole with him on his father's death, and to ask him to assume the care of the city and State as his father and grandfather had done; he adds: "which thing, as being incompatible with my age, and of great weight and danger, I accepted unwillingly, and only for the preservation of our friends and property, because it is difficult to live in Florence without having authority in the State (*senza lo stato*)." Francesco Guicciardini, in one of his works, which has but lately seen the light (Del Reggimento di Firenze), says: "The government of the Medici was a party government, usurped by the party, kept by tyranny neither violent nor cruel, a few cases excepted, where it was necessary to be so; a government founded on the acquiescence of the weak, the union of the interests of the more powerful with its own interest, and on the oppression of all those who assumed an air of independence." The matter of Lorenzo's succession, then, was arranged by the "party," which, the evening after Piero's burial, held a meeting to which all the principal citizens who were in favor of the existing government were invited. Some six hundred of the flower of the city met in the cloister of St. Antonio, near the Porta Faenza, and Tommaso Soderini made a speech and proposed that Lorenzo should be continued in his father's position. Some others remarked, "that it was necessary to have a lord and head, who alone would have to manage the concerns of the State of this noble signory." A sad change indeed in Florentine public opinion when such words could be openly spoken, much less listened to and followed. The manner in which the party kept the reins in its own hands was as follows. The ordinance of September 6, 1476, had placed the election of the highest magistrates for the next ten years in the hands of electors who were named by the Council of the Hundred. The heads of the party were accustomed on extraordinary occasions to select the names of these electors and hand them to the aforesaid council, which at once

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accepted and appointed them, as the council in turn was composed, if not entirely of members of the party, at least of those who did not oppose it. It happened, however, sometimes, that not all the candidates proposed were appointed, and it is easy to see that the time might come when the election might be in the hands of electors unfavorable to the Medici cause. In order to avoid this danger various plans were introduced. In the summer of 1470 the government, then entirely devoted to the Medici, introduced a resolution in the Council of the Hundred, providing for the establishment of an electoral college, consisting of all the electors then remaining from 1434, forty in number, with five new ones to be named, from which number five were to be drawn yearly who were to appoint the *signori* and the *gonfaloniere* from the list of citizens capable of holding office. This outrageous attempt to set up forty-five tyrants over the city failed. Six months later, however, a similar plan succeeded, namely, the *signori* for July and August, together with the electors who officiated that year, named those for the next, the Council of the Hundred confirming them by a bare majority, where previously a two-thirds vote had been necessary. It is needless to say that at the next election in July only the names of reliable persons were put on the tickets, and the government came more and more into the hands of the few. This was all done by the party itself while Lorenzo was still young, and before his great personal influence was felt, and before the attempts on his life increased his popularity and strengthened his hold on the State. How strong this hold was, his later life shows, when he was the real head of the State, when popes, kings, and princes addressed him, and ambassadors corresponded with him.

The period of Lorenzo's greatness has been the subject of many volumes, but the reader who has heretofore depended on Roscoe will find in the work before us abundance of new material which will probably modify most seriously the views advanced by him, while at the same time it will mitigate the extreme opinions of Villari and Trollope.

Lorenzo's last years were rendered unhappy by bodily infirmities and the anxieties of his position, which was necessarily always a critical one. There must have been many things on his conscience which he could not relieve, like Cosimo, by lavish gifts to the church. His life was full enough of dramatic incidents, but its final scene was in some respects the most dramatic of all. After trying various mineral baths in vain, he was carried in March of 1492 to his favorite villa of Careggi. Here he grew rapidly worse, and set his house

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in order for his approaching death. A priest of San Lorenzo administered the *viaticum*, and then, strangest of the many strange events in the history of the Magnificent, Savonarola entered his chamber, having been summoned at Lorenzo's express desire. Of what followed there are two very different versions, one by Burlamacchi, the friend and biographer of the friar, the other by Poliziano. The latter account is the one received by Von Reumont, and runs as follows: "Scarcely had Pico left Careggi when Fra Girolamo of Ferrara, a man distinguished for his learning and holy life, and an eminent preacher of the gospel, entered the room and exhorted the sick man to hold fast to the faith. Lorenzo answered that his faith was unshaken. The friar then urged him to lead in the future a better life, and he said he would with all his might. Finally, Savonarola exhorted him, if necessary, to meet death calmly. The dying man said that nothing would be sweeter if it were the will of God. The friar was on the point of departing, when Lorenzo said: 'Give me a blessing, father, before you leave me.' And with bowed head and countenance, and with all the appearance of religious earnestness, he responded correctly and consciously to the friar's words and prayers, undisturbed by the now open sorrow of his family."

Burlamacchi's account, as given by Villari (Horner's translation, Vol. I., p. 141) is as follows: "Pico had no sooner retired than Savonarola entered, and approached respectfully the bed of the dying Lorenzo, who said that there were three sins he wished to confess to him, and for which he asked absolution: the sacking of Volterra; the money taken from the *Monte delle Fanciulle*, which had caused so many deaths; and the blood shed after the conspiracy of the Pazzi. While saying this, he again became agitated, and Savonarola tried to calm him, by frequently repeating, 'God is good, God is merciful.' Lorenzo had scarcely left off speaking, when Savonarola added, 'Three things are required of you.' 'And what are they, father?' replied Lorenzo. Savonarola's countenance became grave, and, raising the fingers of his right hand, he thus began: "First, it is necessary that you should have a full and lively faith in the mercy of God.' 'That I have most fully.' 'Secondly, it is necessary to restore that which you unjustly take away, or enjoin your sons to restore it for you.' This requirement appeared to cause him surprise and grief; however, with an effort, he gave his consent, by a nod of his head. Savonarola then rose up, and while the dying prince shrank with terror in his bed, the confessor seemed to rise above himself when saying, 'Lastly, you must restore liberty to the people of Florence.' His countenance was solemn, and his voice

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almost terrible; his eyes, as if to read the answer, remained fixed intensely on those of Lorenzo; who, collecting all the strength that nature had left him, turned his back on him scornfully, without uttering a word. And thus Savonarola left him without giving him absolution, and the Magnificent, lacerated by remorse, soon after breathed his last, on the 8th of April, 1492."

Von Reumont, in an appendix, shows that there is good reason to doubt the latter account, and his opinion has been followed by Gino Capponi in his History of Florence.

The most interesting portion of Von Reumont's work for the general reader is, as we have said, the fourth book, — the Medici in relation to Literature and Art, — which treats with the greatest fulness the literary side of the Renaissance. The mass of details accumulated here, as elsewhere, by the author, is enormous; and even if it sometimes obstructs the progress of the narration, it will prove most welcome to students for whom these very details are so important, and which are often so difficult to obtain. A notable feature in this division is that the author does not lose sight of the popular literature of Italy, and the change wrought in it by the Renaissance. This is especially valuable since this period has been thoroughly treated by Burckhardt, Voigt, and others, with almost exclusive reference to classical studies. Von Reumont gives a crowd of details concerning the book-trade of the fourteenth century, prices of manuscripts, manufacture of paper, and the fourth section gives an account of the libraries founded by Cosimo de Medici (San Giorgio Maggiore in Venice, St. Mark's in Florence, and that of the Abbey of Fiesole), Niccolai's manuscripts, fifteenth-century copyists, etc. The fifth section contains a valuable sketch of Italian literature and popular religious poetry. In intimate connection with this section stands the next on Lorenzo de' Medici as poet, for the most salient quality of Lorenzo's poetry is its popularity, and the three popular directions of the literature of his day are all represented in his works, namely, the *laude*, or spiritual songs; *sacre rappresentazioni*, or religious plays; and *canti carnascialeschi*, or carnival songs. Very interesting, too, is the account of the Platonic school, which occupies so large a space in the history of this period, and the very complete sketch of Poliziano, Lorenzo's lifelong friend.

Our space forbids anything but a mention of the section devoted to the fine arts. Von Reumont shows that although the period was not the most brilliant, still it hardly deserves Villari's severe denunciations. In short, everything proves that the age of Lorenzo was not only one of transition, but one the elements of which were held

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together by the strong will of Lorenzo himself; and at his death the most sudden dissolution overwhelmed them, and in a few years it was hard to realize that this brilliant age had ever existed. The sudden disruption of the balance of power, to establish which he had labored all his life, the exile of his family, the invasion of Italy and the beginning of the countless woes of succeeding ages, the religious reaction and the tyranny of Savonarola and his party, — all these were events as sudden as unforeseen, except by a few, among them Lorenzo himself, and for some of which he was directly responsible.

Von Reumont's estimate of Lorenzo is, it seems to us, marked by great fairness. According to him Lorenzo possessed the quickest susceptibility and the most rapid comprehension, together with the earnestness and care of a student, a fresh and happy taste for the fine arts, with the capability of direct application to the ordinary affairs of life. He thus united the qualities of the poet and statesman, the connoisseur and unwearied patron, the citizen and prince, fancy and clear judgment, great plans and patient calculation. He was tireless in the manifold duties which devolved on him in the guidance of a peculiarly constituted State; enduring, embracing the whole of his duties with a sure and rapid glance, and observing the smallest detail; in his riper years prudent and thoughtful, keeping his eye fixed on his aim, without blind self-confidence and boasting, although with a lively feeling of his own position as well as that of the State of which he was the representative. He passed with great ease from practical politics to speculation, science, and poetry, even here comprehensive, many-sided, creative as very few were, with the deepest interest in and most delicate sense of beauty, and with profound insight into the being and problems of art.

In his domestic relations he was friendly, social, cheerful even in the midst of bodily pain, not free from errors that already at that time, and more at a later date, relaxed the marriage relations, yet with a real attachment for his family, for the excellent mother many of whose good qualities he shared, for the wife whom he had not chosen,* for his children, to whom he was a kind but not a weak father and a judicious adviser. A warm, true, attentive friend, attracting and retaining the most different dispositions, always ready to help in word and deed, in the midst of a thousand business cares interfering and interesting himself for high and low. He was not free from the weaknesses and vices of his time; they injured his

* He says in his journal, or *Ricordi*, mentioned above: "I, Lorenzo, took Donna Clarice, daughter of Signore Iacopo Orsino, or rather she was given to me." (*Ovvero mi fu data.*)

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policy, although it stands high above that of most princes and statesmen of his day, Italian as well as foreign, in honesty and consistency. During the last ten years of his life, he clung immovably to the necessity of preserving peace and concord with that national consciousness which corresponded to the idea entertained at that day, and which it would be unjust to blame because it differed from our own. His internal policy has been most severely blamed for the changes made in the constitution for the purpose of increasing his personal authority, and the corruption of which he was guilty in order to obtain unbounded control over the finances of the State.

In conclusion, Von Reumont says that the greatest evil perhaps in Lorenzo's government was in the increasing incongruity between the outer form and the real power, in the removal of authority from its legal centre, whereby both justice and moderation were put in peril. The personal element gave the decision in the policy of the State as well as in its finances and justice. If Lorenzo's government on the whole was free from the excesses which marked that of Cosimo, it was due to the change in the times as well as to the disposition of Lorenzo. "He wished to rule, but he was no tyrant. In the first place, he was too sagacious and knew too well the character and traditions of the people; on the other hand, his was a nature too rich and magnanimous, too much in need of friendship, too fond of enjoyment. In short, he was too much a Florentine citizen."

Such, in brief, is the author's estimate of the most remarkable man of a remarkable period, a period the influence of which is still felt in literature and art; and which will never cease to attract and puzzle the student of political and social history.

5.—*The Methods of Ethics.* By Henry Sidgwick, M. A., Lecturer and late Fellow of Trinity College, Cambridge. London. Macmillan & Co. 1874. 8vo. pp. xxiii. and 473.

Mr. Sidgwick has given, in his table of contents, so complete an account of his aim and mode of procedure, that nothing more is needed here than a brief outline. What he undertakes is a critical review of the various method sby which the common-sense of mankind (or perhaps we ought rather to say, of England and America) justifies to itself the fundamental assumption of Ethics; and to exhibit impartially the conclusions to which they logically lead, without any final judgment of their conflicting claims.

The fundamental assumption is, that there is something under any

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given circumstances which it is right or reasonable to do, and that this may be known. That it may be known; for if we say that it cannot be known but only felt, then of course ethical reasoning stops, and right and wrong cease to have any meaning as distinct from what is agreeable to the momentary impulse. If, on the other hand, there is any universal end of conduct, any Supreme Good, that can be known, it must be, however difficult, yet possible to state it, not merely as something to which conduct conforms, but as something to which it *ought* to conform; in other words, it must be not only consistent but rational. The moral judgments of mankind are commonly attended with (and frequently warped by) emotion; but if they have any claim to the title of judgments it must be practicable to obtain by reflection, from the fluid mass of opinion, a deposit of clear and precise principles commanding universal acceptance. Nor do the discrepancies of moral codes disprove the possibility of ethical science. They only show that on this as on other subjects the human mind is prone to error, and not that truth is necessarily unattainable. But in order to erect the moral opinions of mankind into scientific axioms, it is necessary to show (1) that they can be stated in clear and precise terms; (2) that they are really self-evident; (3) that they do not conflict with any other truth; (4) that they are supported by a complete "consensus of experts."

The methods of Ethics to which these tests are to be applied are reducible to three: (1) Egoism, or the systematic pursuit by each individual of his own maximum happiness as the supreme good; (2) Intuitionism, or the appeal to a sense of what is in itself right or reasonable to be done, without regard to consequences; (3) Utilitarianism, or the adoption of the greatest happiness of the greatest number, as the end of conduct.

1. Assuming the rational end of life, for each individual, to be his own maximum happiness, common-sense does not, on reflection, warrant the belief that happiness can in general be best secured either by giving free play to our impulses, or by regulating them in accordance with a careful comparison of experienced pleasures. We continually discover illusion and error in the attempt to form any standard of pleasures, either by appropriating the experience of others, or by inferring future pleasures from past. And this seems inevitable; for although every sentient individual must be the final judge of the pleasantness or painfulness of his own feelings while he feels them, yet for that very reason he cannot know the feelings of another person or of another moment. His present experience does not enable him to predict anything about a feeling which he

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does not feel. Nor even if we could succeed in arranging pleasures and pains on a scale of preferableness, would it follow that happiness could infallibly be secured by the direct pursuit of it. Often it seems to be more conducive to happiness to follow the leadings of natural instinct; and the intrusion of prudential considerations to be suicidal. Yet, on the other hand, it would be paradoxical to put forward, as the *dernier mot* of ethical philosophy, a negation of the natural supremacy of Reason over impulse. The method of Egoism, then, does not seem of itself to lead to any secure conclusions.

2. Intuitionism. The belief that what seems right to us would be right for all persons under similar circumstances is certainly a condition of right conduct, but it does not follow that what we think right is so. Conscientious persons are continually disagreeing as to what ought to be done, and it seems moreover at least doubtful whether in a case where another is about to do what he thinks right, while we believe it to be wrong, we ought to attempt to urge him to realize objective rightness against his conviction. No doubt we have distinct moral impulses, claiming authority over all others, and prescribing or forbidding kinds of conduct as to which there is a rough general agreement, at least among educated persons of the same age and country. But the objects of these impulses do not admit of being scientifically determined by any reflective analysis of commonsense. The notions of Justice, Benevolence, Veracity, etc., are not emptied of significance for us because we find it impossible to define them with precision, but the attempt to elevate the Morality of Common Sense into a system of scientific Ethics brings its inevitable imperfections into prominence, without helping us to remove them.

3. Utilitarianism avoids the hopeless attempt to define the *summum bonum* as an objective relation intuitively perceived, between conscious minds and each other, or the universe generally, and substitutes for it the consideration of Happiness or desirable feeling as the ultimately and intrinsically Good, other things being good as means to this end. If we make Perfection the end, apart from the happiness accompanying and resulting from it, we cannot say that it is ultimately and intrinsically desirable, because, from the supposition, it is not felt to be desirable, and there is no other way of knowing what is desirable but by feeling it. We do indeed find in Common Sense an aversion to admit Happiness to be the sole ultimate end and standard of right conduct. This aversion, however, is due to the mistake of supposing Happiness to mean Our Happiness as opposed to, or at least distinct from, Universal Happiness. Reason gives me no warrant for considering *my* happiness intrinsically more desirable

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than the happiness of any other person, still less, than that of all other persons. I am to count for one, and for no more than one, in the sum of mankind, or, perhaps, of sentient beings. Utilitarianism, then, accepts the Intuitionist position, that there is something under any given circumstances which we are bound as rational beings to do, and that we can know intuitively what it is. But in place of the precept to "do our duty," which leaves us without any means whereby to determine what our duty is, it substitutes the criterion of happiness, that is, the tendency to increase the pleasures or diminish the pains of mankind at large, or perhaps of sentient creatures generally, as the test of conduct. This is indeed the test to which mankind do and must appeal for decision in the case of the divergence of any respectable section of the community from the received moral code. The first principle of Utilitarianism, that the fulfilment of my desires is not to be regarded by me as intrinsically more desirable than the equal satisfaction of any one else, is the most certain and comprehensive of intuitions, and most of the others seem to be most thoroughly understood when considered as partial and imperfect applications of it. This does not mean that the perception of rightness has always been consciously derived from perceptions of Utility, but only that the morality of Common Sense is instinctively utilitarian, and that we have in it in fact a body of utilitarian doctrine which only needs to be rectified and carried out by more strict reference to its implicit principle.

But it is one thing to admit the principle of Utility, and another thing to feel a decisive impulse to act in accordance with it. As a fact this impulse is not always sufficiently felt, and it is because of this fact that Utilitarians dwell on what they call the Sanctions of their rules; that is, the pleasures to be gained or pains to be avoided by the individual conforming to them; and that Society endeavors by the contrivance of rewards and punishments to replace or to reinforce the spontaneous impulse. But is it possible to demonstrate on empirical grounds the inseparable connection between Utilitarian Duty and the greatest happiness of the individual? It seems not, for Duty may call upon him to sacrifice his life, with all demonstrable possibilities of happiness for himself and for those whose happiness depends on his, to the general good. No doubt social virtue is in general conducive to happiness, but there is no empirical proof that they universally coincide.

If, however, we can conceive the Utilitarian Code as the Law of God, and feel convinced that he has announced his intention of rewarding those who obey his commands, and punishing the disobe-

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dient, — then indeed we have an inducement which is of course adequate. This hypothesis cannot be verified by experience, indeed it contradicts experience, for it declares that the moral order which we see imperfectly realized in this actual world is yet actually perfect. Yet without some such assumption we feel that a universe so constituted that Good for the Individual is not ultimately identified with Universal Good, is fundamentally irrational. This, to be sure, is only saying that unless we can obtain such a premise, Ethical Science is a failure, and the operations of Practical Reason illusory.

With this suggestion, that Ethical Science can be constructed only on a basis borrowed from Theology, Mr. Sidgwick leaves the matter, without deciding whether upon such a basis it can be constructed. This decision would require, he says, a complete discussion of the ultimate basis of philosophic certainty; the ground upon which we assent to propositions as true. Without entering upon this discussion, however, it seems clear that if, as Mr. Sidgwick seems to assume, our knowledge of Good is necessarily empirical, if the only proof that anything is desirable is that it is desired, "the existence of these however elevated desires does not furnish a proof of the existence of their object; indeed, can scarcely afford a strong presumption in favor of this conclusion, considering the large proportion of human desires that experience shows to be destined to disappointment." Indeed, we may go farther, and say that it would be a great misfortune if they were not disappointed, for Happiness is a collective name for an endless variety of objects, often incompatible with each other, which different people suppose to be desirable. It is impossible to imagine any definite state of facts, any mode of life, occupation, complex of circumstances, that would be acknowledged by everybody to be the best possible; and even if such an agreement were by chance hit upon, it could not endure, and ought not to endure, for it would mean the stagnation of thought and the cessation of all moral progress.

It is vain then to expect that mankind will ever attain to definitive unalterable opinions about what is desirable, and it would not be on the whole a blessing if they were persuaded that a divine sanction is attached to those opinions which they have attained.

But admitting the impossibility of raising our stock notions about conduct to the height of scientific axioms, does it follow that it is impossible for each one of us to know for certain in any given case what it is right or reasonable for him to do? Is there not a confusion underlying the whole of Mr. Sidgwick's argument, between our

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opinions as to what is on the whole desirable, and the intimations of Conscience as to what *must* be done in a case peculiar to ourselves? Those general considerations are of immense importance and well worth all the pains we can give to them, for on them the working of the social machinery depends. But they necessarily start from abstractions, from what is true in the average case, as to people in general, or in the long run, and so cannot arrive at certainty as to a particular case, but only at probability. Now it is in one sense true that we act always upon probabilities, since we are not infallible, — but it does not follow that our duty is only probable to us and not certain. For the assent of Conscience is not given to an empirical fact, as to which we may be mistaken, as to whose bearings at any rate we *must* be mistaken, that is, imperfectly informed — but to a logical necessity, namely, what we ought to do, *taking our facts for granted*, — and this need not be doubtful or liable to change. Conscience does not command us to be infallible, but only to act for the best; this is always in our power, and so acting we need never repent what we have done. There is, then, nothing irrational or exorbitant in its categorical imperative, — nothing that requires a miracle or a "consensus of experts" for its support. Is the command too vague? We shall not make it more definite by putting it into a general formula which is just as applicable to one person or one state of circumstances as to another. The objection to making Utility the criterion in Morals is that in the effort to be comprehensive it ignores its fact, and explains the absolute, uncompromising tone of the oracle within the breast by assuring us that it is only one voice out of many, none of them quite agreeing, and all to be equally regarded. To explain the sense of Duty as the resultant of all the impulses of the average man or woman in their ordinary moments, is like explaining Niagara by analysis of the water at its foot. It is the *fall* that makes Niagara, not the chemical constituents of the drops, or their behavior in the pool below. It is the height above the level of ordinary life and its experiences that gives momentum to the act of Conscience, and the attempt to extract the notion of Obligation from the notion of Utility can issue only in mystifications like the setting up of Happiness in general, which is the happiness of nobody in particular, as the Supreme Good, and then trying to supply to this empty abstraction a content which may give it attraction.

This summary discussion of results necessarily leaves out of sight what is perhaps most admirable in Mr. Sidgwick's book, the unwearied carefulness of expression, still more the urbanity and candor, the

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Aristotelian impartiality, "the pure air of scientific curiosity," — most refreshing after the heat and dogmatism of much that calls itself "scientific" philosophizing. To get philosophical problems discussed in this tone is the first condition of that hearty co-operation of men of different schools which Philosophy just now stands much in need of.

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6. — *The Map of Europe by Treaty, showing the various Political and Territorial changes since the General Peace of* 1814. By EDWARD HERTSLET, C. B., Librarian and Keeper of the Papers, Foreign Office. London: Butterworth, 7 Fleet Street. 1875.

NOTHING is so thoroughly satisfactory to any one who ever uses books, nothing gives so much real and enduring comfort as a good collection of works of reference. Works of reference in their highest form are not the encyclopædias, those vast collections of which the first volume is antiquated when the last is published, but works of enduring nature, which serve the student for a lifetime. There are but comparatively few of these monuments of modern research which unite the qualities of excellence, accuracy, and endurance. "L'Art de vérifier les dates" is as valuable now as when it was published nearly a century ago; Du Cange will probably never be out of date; the "Biographie Universelle" is a source of never-failing satisfaction; and if to books such as these be added the more compendious and cheaper works which maintain the connection with the current year, the desired and precious collection is complete.

Mr. Hertslet's book is a valuable addition to our libraries of reference. It not only presents with accuracy and in excellent form the important material for one branch of history, but it covers a period of which there is practically no history for the present generation, and is therefore of double value. Mr. Hertslet's opportunities have been the best possible for the work he has undertaken, and so far as a cursory examination can be relied on, he has performed his task with care and thoroughness. All the European treaties from 1814 to 1875, inclusive, are given, and each is preceded by a head-note, to borrow the legal term, explaining the substance of the document. The work is still further enriched by the insertion of all the Declarations of War, Guaranties of Independence and Neutrality, Decrees of Annexation, and the corresponding protests. All treaties and papers referred to, of an earlier date than 1814, are also given, so that the documentary history of every treaty is complete. The vol-

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umes amount therefore to a complete diplomatic dictionary for the period. Maps are added to all such treaties as seem to require them, and there are two general maps of Europe, in 1814 and 1875. Mr. Hertslet has most sensibly reduced his maps to a scale corresponding to the size of the book, and the misery induced by maps and plans which have to be unfolded, refolded, and more or less torn in the process is thereby avoided. An exception to this rule of reduction might, however, have been made with advantage in the case of the two general maps. As they now stand, they are too small and too crowded with names to be of much practical use. It is pleasant to find an author who has a realizing sense of the value of a good index and elaborate cross-references. Many a good book has been condemned for the lack of any index, or for what is still worse, a bad one. In arrangement, and regard for the convenience of the student, there is nothing wanting, with one very remarkable exception. Mr. Hertslet says in his preface that the book is especially compiled for the use of the English statesman and student. Accepting his own definition of his object, he has made a great mistake in omitting all the treaties, etc., with the United States. The only American treaty given is the treaty of Ghent, and this is not accompanied by the documents and subsidiary treaties necessary to its comprehension. This defect injures the book for Americans, and it is not easy to see why it does not injure it in almost an equal degree for Englishmen. Treaties with the United States assuredly have been one field for English diplomacy. It is not conceivable that lack of importance or of interest can have been the ground of exclusion. It is not necessary to go further back than the Treaty of Washington to find points of international difference in which Englishmen, at the time at least, professed a certain interest. Searching for reasons is idle; Mr. Hertslet offers none, and the book suffers from the neglect of one important branch. It is on this score open to the charge of incompleteness, the most grievous sin in a book of reference. This is, however, the only fault apparent at first sight, and so much has been done, and well done, that it would be captious to insist too greatly on one error.

We will not damn the book by saying, in the language of booksellers, that it should be in every gentleman's library, but we have no hesitation in saying that it is a book of great value, not only to every student but to all educated men.

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7. — 1. *Nero: An Historical Play.* By W. W. Story. William Blackwood & Sons: Edinburgh and London. Scribner, Welford, and Armstrong: New York. 1875.
2. *Rose and Roof-Tree: Poems.* By George Parsons Lathrop. Boston: James R. Osgood & Company. 1875.
3. *The New Day: a Poem in Songs and Sonnets.* By Richard Watson Gilder. New York: Scribner, Armstrong, & Co. 1876.
4. *Cartoons.* By Margaret J. Preston. Boston: Roberts Brothers. 1875.
5. *The Ship in the Desert.* By Joaquin Miller. Boston: Roberts Brothers. 1875.
6. *Guido and Lita: a Tale of the Riviera.* By The Right Honorable, The Marquis of Lorne. New York: Macmillan & Co. 1875.

The first misfortune for a work of art or literature is, that its subject should be a cause of regret. It is like stumbling on the threshold. Mr. Story is not the first who has found matter for a tragedy in the reign of Nero, but he is the first who has attempted to dramatize the whole. There are few of his admirers who will not lament the choice of such a theme; it lacks all that can move us, except to horror and disgust; and there is a coarseness almost inseparable from it (which Mr. Story has not eschewed in dealing with it), alien to the genius of our times. To say the least it was a bold attempt, and that it is not a total failure is the best proof of the author's talent. The final test of the specific merit of any dramatic work is its fitness for representation; judged by this standard, Nero is more successful than any composition of the same class which has appeared within many years. Whether Swinburne's, Browning's, or Tennyson's tragedies be performed or not (and we believe the experiment has been tried in the case of the two last mentioned), they are essentially unsuitable for the stage, whereas, with some adaptation, Nero would make a most effective play. As it stands, it needs compression; its length weakens it. There are many scenes which serve no purpose except that of following the historic narrative with exactness; such are Scenes V. and VI., Act III., and the two scenes in the camp in Spain, Act V.; a phrase or two in another place would supply the links without hampering the action. Those also in which the death of Seneca and Poppæa is protracted are hurtful both to the general and particular effect. The episode of Sporus is unfit to be performed, and the play

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would lose nothing by leaving it out. In Scene I., Act III., Agrippina, finding that her authority over her son is gone, strives to maintain her influence by her charm as a mere woman, — a terrible situation, for which, as in everything else, Mr. Story has the warrant of history; depicted with power, it is the most telling moment of the drama, and might be given in a French or Italian theatre, but not before an English-speaking audience. The play has vigor and marrow enough, however, to spare it. The same excerption might be practised with good results upon many of the speeches, which are too lengthy; striking dramatic points are lost by multiplying words. Important as these omissions may seem, they would not really touch the core of the play. Nero, Agrippina, and Poppæa have individuality, and set each other in strong relief. Agrippina is an imposing figure, and except that now and then she rails overmuch, is sustained with consistency. Nero's childish peevishness is unpleasantly prominent in the beginning; it may not be out of keeping for him to say, —

"He 's a bore,
And for his verses, they 're not worth a straw."

But such expressions, and similar ones, are below the dignity of the verse, and taint it occasionally with modern vulgarity. But Nero is a remarkable character; history has given us the elements and outlines, which here are completed and combined; the momentary strength which flashes forth, as in his defiance of his mother at the close of Act II., the childish facility to be pleased, irritated, cowed, are portrayed with skill. These are especially brought out in the early scenes with Poppæa, but the climax is in Act V., Scene VI., when, with the footsteps of fate already sounding in his ears, he gives way by turns to abject cowardice, insensate rage, superstition, and the puerile vanity which is the keynote of his nature. There is a sharpness, a shrill, acrid quality in his passion which sets the nerves on edge without moving the sympathies, exactly as the anguish of vice should do. Besides these principal personages, some of the minor ones, Burrhus, for instance, would be impressive in good hands.

The literary merits of a play are so involved with the dramatic, that the finest passages generally lose their effect unless the whole scene can be given. Mr. Story has a defect which he shares with the eminent English poets of the present day; like Molière's M. Jourdain, they make prose without knowing it. Sometimes he is worse than prosaic, he is trite; one may expect occasional platitudes from Seneca, but not from Agrippina. But this is far from the prevailing

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tone of his dialogue. We give a few striking and poetic sentences which suffer least by being rent from their place in the play: —

"All passion, when repressed,
Gives force to action, — wings the arrow home,
With the strained tension of its utmost bend."

"My feet are wearied here,
Treading along these perilous defiles
That beetle over death, blown by wild gusts
That tear and strain me."

"I love you so
That all goes wild within me, — all my thoughts
Blow here and there like loose leaves in a gale."

"Wild with senseless fears,
And starting at vain shadows, like a horse."

"O what a day it was
When, with a shout that seemed to rend the air,
The army hailed you Cæsar! My poor heart
Shook like the standards straining in the breeze,
With that great cheer of triumph. All my toil
Then seemed as nothing. I had won the prize.
. . . . . .
"One such hour as that
Outweighs long years of common life, — repays
The struggle and the toil that gendered it;
And all the past pain lying dark behind
Shows like night's background for the lightning flash
Of one keen, vivid joy to blaze against."

The excellence of much of this tragedy, and the nature of its defects, lead one to suppose that the latter arise chiefly from carelessness, and this suspicion is borne out by the absence of Narcissus and Pallas from the list of *dramatis personæ*, although they appear in the play. Nor should it be forgotten that literature is only Mr. Story's recreation, though it might well have been his vocation.

If a poet is not original, the next best thing is to be like one of the great masters of song. Mr. Lathrop has the gift of recalling Tennyson, not by imitation, but by a real resemblance, springing, no doubt, from a kinship of talent. Melancholy, June Longings, the Silent Tide, all have the family likeness, but unluckily it is to the Laureate's weaker features. The rural idyls are not the best or most beautiful of Tennyson's poems, and these are what the Silent Tide reminds one

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of. There are good lines, faithful descriptions, passages which are almost fine; but the highest praise which can be given to the whole is that it feebly resembles Enoch Arden or Dora. A Rune of the Rain wakes the same reminiscence, not to particular poems, however, but to the spirit, the musical voice, the delicate, true touch of Tennyson in those first two volumes which once made him the idol of a young generation. This is a most lovely and delightful ode, as soothing and refreshing as its theme; not Wordsworth himself was more tenderly intimate with Nature in her weeping moods, nor has found fitter words for them.

The April Aria, and Sun-Shower, have some of the same charm, though marred by a few imperfections and affectations. Let it be said in passing, that Mr. Lathrop is not generally affected; whenever he seems so, it strikes us as the consequence of an unsuccessful struggle with his verse, not of a conscious effort, such as grimaces on the pages of almost every rhymester of the present day. The love-poems are full of youth and feeling; Lily Pond has one stanza, as delicate as a picture of Kensett's: —

> "One ripple streaks the little lake,
> Sharp purple blue; the birches, thin
> And silvery, crowd the edge, yet break
> To let a straying sunbeam in."

They are all pretty, and worthy to be slipped into the palm of a fair hand, but hardly to be published. We should not mention a poem called Jessamine, but for our wish to remind a number of writers that a burden belongs to the ballad alone, and that a tale in verse is not necessarily a ballad. Here we have a very commonplace story, with its tame quatrains, dragging after them a fifth line rhyming with none other: —

> "And the moon hangs low in the elm."

Helen at the Loom is a study, and more finished in execution than anything else in the book; it contains very fine lines, but there is an inherent defect, unhappily common to too many of the other poems, — lack of thought. The Bobolink, Song-Sparrow, Before the Snow, and even some of those already named for their sweetness and grace, have nothing in them. The absence of the vital principle is sadly felt in the two most serious attempts of the collection, Burial Song for Summer, and Arise, American; Mr. Lathrop has not underestimated the dignity of his subject, but his verse, instead of rising into loftier spheres, wanders about in emptiness, with high-sounding words which produce only a hollow reverberation. There is the same shortcoming in Grief's Hero, but here the inspiration at least is from

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within, and intimates a capacity for a more elevated strain than could be guessed even from the beautiful Rune of the Rain; Contentment, also, which reads at first like an anagram of some of Wordsworth's little moral poems, contains a grain of this higher quality. The earnest tone which rings through Fairhaven Bay and the Silent Tide inclines us to hope that hereafter Mr. Lathrop, in maturer verse, may find ideas deserving his charming gift of words.

Mr. Gilder tells us that the first of his sonnets is "After the Italian." The fact is, that many of them are merely clever imitations of the poems translated by Mr. Rossetti, first published under the title of "The Early Italian Poets," now in a revised edition called "Dante and his Circle." We do not know whether Mr. Gilder be acquainted with these compositions in the original or no, but strongly suspect not; we think the volume before us bears unmistakable trace of the influence of Mr. Rossetti himself, and his fellow-poets and painters. If the Riddle of Lovers, No. I., Love's Cruelty, and half a dozen more of the sonnets recall Mr. Rossetti's renderings from the Italian, Love in Wonder, the first part of The Sower, and portions of other poems suggest no less strikingly the wild-eyed, woebegone apparitions who peer through the briers and torn grasses on the canvas, stained-glass, tiles, and tapestry of the Bloomsbury brotherhood. If Mr. Gilder have not seen and copied these figures it is alarming to think how much of this allegorical extravagance there must be in the air. But this is not the worst of it; these small, fair pages, with their pretty, fanciful woodcuts of flowers and peacock's feathers, are stained with the ferocious coarseness of the mystic-satyr school. This is one of several peculiarities in "The New Day" which rouse a hostility unfavorable to critical calmness. Another is the self-complacency which presents us with the following Song: —

> "My love grew with the growing night, —
> And my love dawned with the new daylight."

A poet must indeed have a conviction of the preciousness of his lines who sets two, or even four, like these, alone in the midst of a page.

There is careful work in some of the sonnets, and the result is an occasional effect of considerable dexterity, but it is like old goldsmith's work, or ivory-carving of no high value; even were it first-rate, it would be craft, not art. There is some good word-painting, of which the following water-color sketches are specimens: —

> "A dun, bleak stretch that slants to the salt sea's gray, —
> Rock-strewn, and scarred by fire, and rough with stubble, —

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With here and there a bold, bright touch of color, —
Berries and yellow leaves, — that make the dolor
More dolorous still. Above, a sky of trouble.

"But now a light is lifted in the air;
And though the sky is shadowed, fold on fold,
By clouds that have the lightnings in their hold,
That western gleam makes all the dim earth fair, —
The sun shines forth and the gray sea is gold."

There are a few fragments of genuine beauty in which the thought is simple, and not tormented by *concetti*. Of these the best are The River, and one real gem, "I count my time by times that I meet thee."

"I count my time by times that I meet thee;
These are my yesterdays, my morrows, noons,
And nights; these are my old moons and my new moons.
Slow fly the hours, fast the hours flee,
If thou art far from, or art near to me:
If thou art far, the bird's tunes are no tunes;
If thou art near, the wintry days are Junes. —
Darkness is light, and sorrow cannot be.
Thou art my dream come true, and thou my dream;
The air I breathe, the world wherein I dwell;
My journey's end thou art, and thou the way;
Thou art what I would be, yet only seem;
Thou art my heaven, and thou art my hell;
Thou art my ever-living judgment-day."

The volume, although its contents are not perfectly homogeneous, is called "A Poem," and is a monument to living love; it may therefore seem unfair to judge it piecemeal; it is not hewn of a single block, however, but built up of many vagaries and phases, some of which are so obscurely and enigmatically expressed as to remain puzzles to the reader. If these are secrets between the lover and his mistress, the public has nothing to do with them at all; but it appears to us that they are only thoughts, feelings, and emotions, belonging to the passion itself, and there is an impertinence in trying to disguise them in strange, miming masks.

Miss Preston prefaces her collection of "Cartoons" by a sort of apology, called "The Good of It": —

"When any task my hands essay
Wherewith to fill the eager day,
There rises to my thought alway,

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"This hindering question, Whence the need
Of this, thy lightly-weighted deed?
Forego it, and who taketh heed?
. . . . .

"Amidst the thousand myriad lives
That overcrowd earth's human hives,
What matter if no work survives
Of thy small doing?—
. . . . .

"Mock meekness all! There doth not live
Any so poor but they may give,
Any so rich but may receive.

"Withhold the very meagrest dole
Hands can bestow, in part or whole,
And we may stint a starving soul.

"What then?—If one weak song of mine
Should yet prevail to bring the shine
Back o'er some spirit's dull decline,

"And for a moment seem to fling
A flash about its sun-setting,—
I think (God granting) I may sing."

If this plea be accepted, it leaves very little to say about her performances, or those of anybody who may take the same ground. There is an order of poetry which gives pleasure to numbers of people who find none in Milton, Dryden, Wordsworth, or Shelley, or even in Scott, Campbell, or Moore; if it were proscribed, it would rob life of a charm for thousands who are incapable of appreciating anything higher. But the same argument is good for the large class who tell you with some satisfaction that they do not understand your scientific composers (by whom they mean any one of standard merit, from Bach to Mendelssohn), but that nobody loves music more dearly than they do; and they do enjoy a modern ballad, or a waltz from one of Offenbach's operas, immensely, keep time to it with their head and feet, and hum or whistle it afterwards sentimentally. There are also hundreds of thousands who have no enjoyment in a good picture or engraving of any school, but rapturously admire Faith clinging to her cross, the Mother's Dream, and chromo-lithographs of bird's-nests and berries. Miss Preston's apology involves the whole question of whether a taste for what is not the best, nor even good, should be ncouraged; but as this cannot be settled by a word, we will go on

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to her Cartoons. In those from the Life of the Old Masters she has taken incidents and situations of more or less interest, and treated them in the manner of Mr. Browning's Andrea del Sarto, or Fra Lippo Lippi. This manner is easily copied and often copied, but success does not lie in similarity, which a parody can achieve. The attempt to imitate Mr. Browning's best work in his best way was too ambitious. These Cartoons have neither the dramatic nor picturesque power which their form and subjects demand. In those from the "Life of the Legends," Miss Preston has got together a number of pretty old stories, which read pleasantly in verse; in some of them, however, as, for instance, the death-scene of the Venerable Bede, entitled "Consummatum Est," the task of turning prose into metre does not seem worth the trouble, however slight this may have been. The poems from the "Life of To-day" are the best in the book, and published singly, as we suppose they originally were, would produce more effect than together, which makes their sameness and tameness too evident. The tameness is not helped by the expedients of broken sentences, exclamations, and interjected conversational parentheses; and Miss Preston should allow her readers to supply their own italics. Enforcing the emphasis by this means implies doubt, either of the intelligence of the public, or the strength of the passage so signalized.

We have turned over the Cartoons again and again in search of some poem, some verse, which should give a sense of the wholesome, agreeable flavor of the whole; they are almost all equally flowing, well-worded, easily rhymed; the difficulty is in choosing amid the unvarying commonplace of thought and expression. Miss Preston has an undeniable facility for versification; poetic talent is not discernible in these leaves, at any rate. It seems as if translation opened a wide and happy field for persons with her peculiar gift. A lady of her name has published a most charming version of the Provençal poem, "Mireio." The Misses Swanwick have given noble renderings of Goethe's "Iphigenia," and some of the Greek tragedies. Remembering how few, either French, German, or classic poets, are within the reach of those who read only English, we cannot but think that Miss Preston might brighten the lives of a great many more people by devoting her pen to this service.

It would be much easier to give an abridgment of De Quincey's "Confessions of an Opium-Eater" than of the "Ship in the Desert." The extreme difficulty of telling the story in the first instance may be gathered from several false starts which Mr. Miller himself makes. The introduction shows us a man in a slouch hat, a skin-clad trapper,

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a tawny chief of Shoshones, and an Indian warrior (we do not know what four varieties these represent), all getting a horrid fright in the lonely desert of Arizona, the cause of which is never explained. But each time, just as we hope we are on the right track, we are jerked up with "Nay, nay, the tale is not of that." "Avaunt! the tale is not of it!" "No, no, this tale is not of him." "Arrête! the tale is not of that." "Away! the tale is not of these." "Tut, tut! the tale is not of this." At length, at the third canto, we are told: "But this the tale," and square ourselves to attend; the narrative opens on the Missouri, with the pursuit of a boat manned by negroes, and commanded by an old white sailor, by another boat with a crew of South Sea Islanders, led by a Spaniard. In the first boat is a woman, the heroine, by default, of the story, if it be a story. Now, surely, we are fairly under way. But not too fast, —

> "Pursuer and pursued. And who
> Are these that make the sable crew?
> . . . . .
> And who is he that leads them here?
> . . . . .
> Nay, these be idle themes. Let pass,
> These be but men. We may forget
> The wild sea-king, the tawny brave,
> The frowning wold, the woody shore,
> The tall-built, sunburnt men of Mars. . . . .
> But what and who was she, the fair?
> . . . . .
> A bride, or not a bride? . . . .
> You shall not know. That shall not be
> Brought from the future's great profound
> This side the happy hunting-ground."

Mr. Miller seems to identify this problematical beauty with another who sat in his heart one day near Rome, and loved or did not love him, for we shall not know that either, he says. We become confused. Still the old sailor and the dark-eyed woman, the tall Spaniard, the negroes, and the Caribs are the actors in this extraordinary harlequinade, the scene of which shifts all across the continent, its mountains, its midmost wilderness, to the fertile latitudes beyond. But the poet's personality and reflections are hopelessly entangled with the thread of the story; and his determination to baffle impertinent curiosity keeps us in the dark so completely that we throw down the book at the end, and wonder what it was all about.

To instance the vices of taste, versification, and grammar, which occur in the poem, would require a book nearly as long as itself; one or two may be quoted as curious: —

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"Adown *thine* wooded walls inwrought
With rose of Cherokee and vine."

"'T was vastness, even as a sea
. . . . .
'T was like the dim edge of death is,
'T was hades, hell, eternity."

It abounds, besides, in exaggeration, incoherence, repetition, absurdity, and a species of boastful, false morality; much of it sounds like a capital parody of his own style. There is, however, a picturesqueness and freshness belonging to the unhackneyed scenes and modes of life which supply his imagery, a rough strength and vigor in character with the existence which he describes. There are some exceedingly striking passages, one especially on the march of the pioneers of 1869:—

"What stony, uncommon men were these,
These settlers hewing to the seas!
Great horny-handed men, and tan;
Men blown from any border-land;
Men desperate, and red of hand;
And men in love, and men in debt,
And men who lived but to forget,
And men whose very heart had died.
. . . . . .

"Yet every man among them stood
Alone, along that sounding wood,
And every man somehow a man.
. . . . . .

"What strength! what strife! what rude unrest!
What shocks! what half-shaped armies met!
A mighty nation moving west,
With all its steely sinews set
Against the living forests.—
. . . . . .

"O bearded, stalwart, westmost men,
So tower-like, so Gothic built!
A kingdom won without the guilt
Of studied battle; that hath been
Your blood's inheritance. . . . .
Your heirs
Know not your tombs. The great ploughshares
Cleave softly through the mellow loam
Where you have made eternal home
And set no sign."

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The description of the plains and camps, day and night in the desert, and the emigrant trains with long processions of cattle, is even finer, but too long for an extract; these cantos, twelve and thirteen, just fall short of grandeur; unfortunately they are weakened by repetition. If this were the literature of a new language and a new race, if it were really the beginning of another era of thought and speech, we should judge it very differently; but time does not develop the frontier type, it destroys it: men and conditions, such as are celebrated above, and the very words in which they are praised are fortuitous, transient, born of brief circumstance, not to be renewed. The West, like the East, inherits the long line of English poets, and American ones to boot, and therefore we cannot consider Mr. Miller as the bard of a new dispensation more than any ignorant man anywhere, who has missed the benefit of knowing his predecessors. Portions of his productions excite admiration, but serious consideration or criticism of them would be out of place.

When the Duke of Argyle published his "Reign of Law," some quiet scoffers said that it was very good science for a duke. The English public, at least, will accept "Guido and Lita" as good enough poetry for a marquis, and the son-in-law of their Queen. The Academy says that Lord Lorne's poem is like a prize poem (by which every English reader understands the best sort of school-boy verses), and in saying that it says everything. The story is romantic, and so is the setting; the descriptions are exact; the chiming couplets fall upon the ear with the soft, steady cadence of a spring rain or a purling brook; there is a total absence of spirit, interest, life. It is not bad, but so monotonously mediocre, that there is nothing to quote above the rest, except the following passage, which, although ending with perhaps the worst line in the whole poem, has the power of truth: —

> "The wind increases; the flotilla strown
> Far o'er the seas is tossed apart, and thrown
> From swelling ridges, whence the world is seen,
> To lonely hollows walled with waters green.
> Swift, ragged clouds eclipse the sea and sky,
> And by the staggering ship pass shrieking by."

Yet a man must have a great turn for versification who can round and rhyme nearly twenty-five hundred lines smoothly, musically, without a serious flaw in melody or measure, nor is such finish attained without conscientious pains. There is no eking out the measure with words like "every" and "sovereign" by giving them false quantity. Some of the born geniuses on both sides the Atlantic might take a lesson in this from Lord Lorne.

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8. — *The Age of Pericles: A History of the Politics and Arts of Greece from the Persian to the Peloponnesian War.* By WILLIAM WATKISS LLOYD. London. Macmillan & Co. 1875. 2 vols. pp. xviii. 390; xiv. 416.

THOUGH the Past, regarded as merely past, has no existence, and therefore does not change, any portion of it viewed in the Present will change its relations and proportions as the common boundary of the two eternities moves forward and alters men's level. Hence it will always be necessary to write and rewrite histories of past periods, in order to adjust them to the proportions of the larger-growing whole, whereof they will become larger or smaller fractions according to their evident measure of influence upon the Present. Especially is this true of that period which was familiarly known to the later Greeks as the *Pentekontaëtia*, and which, without any great abuse of language, may be called the Age of Pericles. For the last four hundred years, in spite of the inexorable direction of time, we seem to have been approaching that era, so much have its visible proportions been continually increasing. The Roman and mediæval mists, through which its brilliancy had to be tempered for eyes less eagle-like than those of the Hellenes, are gradually clearing away, and leaving an excellent opportunity to write a new history, for any one who has scaled the loftiest peaks of the Present. Whether Mr. Lloyd has done this, and so seized the opportunity, is the question which we shall now attempt to answer.

As regards the general scope of the work: To give a complete picture of the Age of Pericles, comprehending all those interwoven institutions through which humanity realizes itself as a spiritual essence, — religion, art, polity in its three grades of family, society, and state, and the education of the individual to a rational participation in these, — is something that Mr. Lloyd has not undertaken. What he has undertaken suffers in consequence. The political and artistic sides of Hellenic life, to which he professedly confines himself, are treated in a fragmentary way, and leave no sense of unity in the mind, such as one feels after reading Mommsen or Curtius. Mr. Lloyd is a member of the Society of Dilettanti, and probably would not feel aggrieved, if we should say that he has written this work in that capacity. It is not the work of one who, with impartial mind, has endeavored to absorb all the results of modern investigation and insight, careless of what man or people first arrived at them, but of one who, with strong leanings to art, and very settled political

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views of a one-sided, French kind, writes very much for his own pleasure. The result, in this instance, is a popular work, which will doubtless be widely read, and for many reasons ought to be.

Though undertaking to write the artistic and political history of the *Pentekontaëtia* only, he has devoted one hundred and thirty-eight pages of the first volume to an account of the Persian wars, which is certainly a good deal of an "overlap" (Vol. I. p. 1). Moreover, he has given us three chapters on religion and its observances, two on philosophy, and one on Hellenic ethnology, all of which would properly enough have found a place in a work of larger scope. The chapter on the Eleusinian Mysteries is such as one might expect, if Lobeck had never written *Aglaophamus*. But Lobeck was a German, and Mr. Lloyd has a strong prejudice against everything German, including scholarship and politics. This crops out very frequently: for example, Vol. II. p. 231, where he alludes to "the confident expositions of ancient music by Boeckh and his successors," from which he says he has "always risen, wherever the fault may be, with a sense of sorrowful disappointment and stupor"; Vol. I. p. 402, where there is a very gratuitous and senseless fling at the German Empire, etc. Mr. Lloyd, however, pays dearly enough, in narrowness, for this prejudice, but for which his book would have been much better than it is.

Mr. Lloyd's *forte* is Greek art, more especially the material or so-called *apotelestic* arts, architecture, etc., in which he has elsewhere done some very valuable work. His prejudices against things German have, in some points, left him behind the times. For instance, he still speaks of the so-called Theseion as certainly the *heroön* of Theseus, whereas it is quite certain that it was not a *heroön* at all, being in all probability a temple of Hercules. The passage in Plutarch (*Theseus*, 35), cited to prove that "at Athens the Theseia and Heracleia were interchangeable," proves, if anything, the very opposite (*ὅσα ὑπῆρχε τεμένη πρότερον αὐτῷ, τῆς πόλεως ἐξελούσης, ἅπαντα καθιέρωσε τῷ Ἡρακλεῖ καὶ προσηγόρευσεν ἀντὶ Θησείων Ἡράκλεια, πλὴν τεσσάρων, ὡς Φιλόχορος ἱστόρηκεν*). Cp. Wachsmuth, *Die Stadt Athen im Alterthum*, Vol. I. pp. 357, *et seq.* There is nothing new or original in Mr. Lloyd's account of Greek art; but he has written popularly about it, and what he has said will meet the needs of a large public, upon whom his genuine enthusiasm cannot fail to have a most salutary and inspiring effect.

In the *practical* or immaterial arts, poetry, etc., our author is not so strong, although his enthusiasm is equally genuine. He has evidently read the Greek classics lovingly and appreciatively, as liter-

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ature which is to be felt and enjoyed, not merely dissected. He has, however, following some French critics, — M. Taine, etc., — erred in endeavoring to find explanations or occasions for some of the masterpieces of Greek tragedy in contemporary political events and personages. In doing so, he has assigned to some of them purely arbitrary dates, for example, to the *Suppliants* of Æschylus, not to say that he has forced upon them meanings which the text in no way sustains. This attempt to weave the tragic poetry of Athens into her political history must be regarded as the most fanciful and weakest part of the book. If there be anything that Greek art and all true art eschews, it is just such allusions to the historical as such, to the merely ephemeral. To have made the grand myth of Prometheus a vehicle for the sorrows of Themistocles would have seemed to the Greek, with his exquisite sense of the befitting, and with his religious consciousness, hardly less outrageous than it would seem to us, if a dramatist should employ the story of the Crucifixion to impress upon us the fate of John Brown. It must be admitted that Mr. Lloyd's acquaintance with Greek literature, extensive as it is, is not that of a profound critic gifted with philosophic insight, or that of an accurate scholar; but rather that of a dilettante. He never penetrates into the principle, the idea, that lies at the base of all Greek mimetic art, the effort to present a deed in its entirety. His lack of accurate scholarship frequently manifests itself; for example, Vol. I. p. 132, he speaks of the "promontory of Lectos," instead of Lecton or Lectum (τὸ Λέκτον, Athenæus, *Deipn.*, III. 88 F.); p. 233, of the "*exarchon*, the leader of the chorus," instead of *exarchos* (ἔξαρχος); II. p. 298, he makes the atoms of Democritus differ in "figure and form" (σχῆμα and εἶδος). How figure differs from form we cannot say; but Aristotle, who is our authority on the subject, tells us that these atoms were supposed to differ ῥυσμῷ καὶ διαθιγῇ καὶ τρόπῳ, words which he renders into his own terminology by σχήματι καὶ τάξει καὶ θέσει. (*Meph.*, I. 4.) Page 167, he implies that Κρόνος and χρόνος were originally identical, Kronos being merely a personification of time. This notion has long since been exploded. (*Vid.* Curtius, *Grundzüge*, p. 159; *Studien*, Vol. V. p. 148 [10].) Page 375, he tells us that "the connections of some of the preserved plays of Sophocles — so I have convinced myself — may be established as satisfactorily" as the fact that the Oresteia of Æschylus forms a trilogy. The "some" here can, of course, refer only to the Theban tragedies, the two Œdipuses and the Antigone; and these, as has been sufficiently shown by Leopold Schmidt in *Symbola Philologorum Bonnensium*, pp. 219, *et seq.*, do not form a trilogy.

In writing this work Mr. Lloyd has relied mainly on the original

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historical authorities, Herodotus, Thucydides, Plutarch, etc., rarely referring to a modern work, and never, we believe, to an inscription. Although he does not seem, before using these authorities, to have come to any definite conclusion respecting their comparative credibility, or the extent of the indebtedness of one to another, it must be admitted that he has, in the main, used them judiciously. His dislike to Aristophanes, whom he evidently cannot forgive for having been on the side of aristocracy and for having held Euripides up to ridicule (Vol. I. p. 374), has prevented him from referring, to any great extent, to him. What modern authorities he may have consulted we cannot say. His chronology coincides pretty closely with that of Pierson (*Philologus*, Vol. XXVIII. 1869), and does not deviate very far from that of Krüger, Grote, Curtius, or Schaefer.

Mr. Lloyd cannot be called a good writer. He is never eloquent, and often awkward and clumsy. The interest of his work comes from the subject, and the decided views of the author, never from the style. He has a fondness for new and unusual words and expressions: for example, *regnal* (Vol. I. p. 156); *taken over*, i. e., undertaken, *übernommen* (p. 197); *gave loose* (p. 205); *disserted* (Vol. II. p. 131); *supersession* (p. 294); *militarised, counter-sense* (p. 329); *hoplite Athenians* (p. 343); *command-in-chief* (p. 346); *contravert* (p. 356); *gods of ratifying oaths*, i. e. ὅρκιοι θεοί (p. 360); *inartificiality* = inartistic nature (p. 379); *aby* (p. 376, and elsewhere); *countervail*, occurring more than twenty times, etc. The book is not free from typographical mistakes, for example, *Ægypt, Stoboeus, comoedian* (or is this intentional?); and the references at the foot of the pages are often very misleading. For example, if we were to trust the two on page 102 (Vol. II.), we should attribute eleven books to Aristotle's *Politics*, and a hundred and eleven to the Pseudo(?)-Xenophontic tractate on the *Polity of the Athenians*. Instead of XI. 4 and CXI. 7, we must read II. 7 and III. 7.

We have intentionally dwelt more upon the shortcomings of Mr. Lloyd's book than upon its merits, although these are neither small nor few. As a popular history of one of the most remarkable periods in human development, it supplies an immediate and deeply felt need. Many persons, to whom Polygnotus, Pheidias, Æschylus, etc. have been previously little more than names, will rise from the book enlightened, and encouraged to seek further information. At the same time, we wish to emphasize the fact that it is far from being an adequate history of the Age of Pericles, such a history as might be written by a profound scholar gifted with philosophic insight, poetic inspiration, and mastery of style. Such a history — and there could be few more grateful tasks — has yet to be written.

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